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Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

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Nos. and

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JAMES L. BUCKLEY, *et al.*,

*Appellants,*

v.

FRANCIS R. VALEO, *et al.*,

*Appellees.*

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**ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

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## JOINT APPENDIX (VOL. I) PLEADINGS AND ORDERS

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## APPENDIX

**Docket Entries in the United States District Court for the District of Columbia**

| DATE | PROCEEDINGS |
|---|---|
| 1975 | |
| Jan 2 | Complaint, appearance |
| Jan 2 | Summons, copies (6) and copies (6) of complaint issued #1 Ser. 1/9/75 #2 Ser. 1/7/75 #3 Ser. 1/8/75 AG 1/3/75 DA 1/7/75 #5 Ser. 1/7/75 & 1/9/75 |
| Jan 2 | APPLICATION of pltfs. for convening of Three-Judge Court; P & A's; c/s 1/2/75. |
| Jan 2 | MOTION of pltfs. to reduce time for defts. to answer from 60 days to 30 days; c/s 1/2/75. |
| Jan 16 | OPPOSITION by defts. to motion by pltfs. to reduce time for defts. to answer; P & A's; c/m 1/16/75. |
| Jan 16 | MOTION of defts. to dismiss; P & A's in support of motion to dismiss and in opposition to application of plfts. for Three-Judge Court; appendices A, B, C; c/m 1/16/75. |
| Jan 16 | OPPOSITION by defts. to application by pltfs. for Three-Judge Court; c/m 1/16/75. |
| Jan 24 | ORDER denying application of plaintiffs for Three-Judge Court and directing Clerk to transmit entire file to Clerk of Court of Appeals for this Circuit. (N) Corcoran, J. |
| Jan 24 | RECEIPT from U.S.C.A. of entire file and cer- |

tified copy docket entries pursuant to order of Jan. 24, 1975.

Apr 14 COPY of order of U.S.C.A. remanding record to U.S.D.C. to the extent indicated in attached memorandum; record to be returned to U.S. C.A. as soon as possible, but no later than May 19, 1975; deferring motion to dismiss pending return of record; Memorandum attached. (file received Apr. 17, 1975)

Apr 15 REQUEST to Chief Judge of the Court of Appeals for convening of Three-Judge Court.
Corcoran, J.

Apr 15 DESIGNATION of the Hon. Chief Judge David L. Bazelon and The Hon. Spottswood W. Robinson, III, United States Circuit Judge, to serve with The Hon. Howard F. Corcoran, United States District Judge, as members of the Court to hear and determine this action.
(N) Bazelon, C.J., U.S. C.A.

Apr 17 APPEARANCES of William T. Lake, Lloyd N. Cutler and Paul J. Mode, Jr. for intervening defts. #1, 3, 4, 5, 6, 7, 8, 9, 11. CD/N

Apr 16 STATUS CALL (Motion of James C. Calaway to intervene as party pltf. granted. OTBP
(Rep: Joan Blair) Corcoran, J.

Apr 16 APPEARANCE of John R. Bolton for pltfs.

Apr 16 APPEARANCE of Ralph R. Winter, Jr. for pltfs. (127 Wall St., New Haven, Conn)

Apr 16 APPEARANCE of Arthur F. Fergenson for pltfs.



Apr 16 APPEARANCE of Al J. Daniel, Jr. for James C. Calaway, intervenor-pltf.

Apr 16 APPEARANCE of Stuart Nelkin for intervenor pltf. James Calaway. (4635 Southwest Freeway, Suite 320 W. Houston, Texas)

Apr 16 APPEARANCE of David J. Anderson and Dennis G. Linder, Dept. of Justice for federal defts.

Apr 16 APPEARANCE of Fred M. Wertheimer for intervenor defts. John Gardner and Common Cause.

Apr 16 APPEARANCE of Kenneth J. Guido, Jr. for intervening deft. John Gardner and Common Cause.

Apr 21 ANSWERS by pltfs. to interrogatories; c/s 4/18/75. (fiat) Corcoran, J.

Apr 22 INTERROGATORIES by deft.-intervenors Common Cause & John W. Gardner to pltfs.; c/s 4/22/75.

Apr 21 ORDER granting leave to United States Senator Lee Metcalf to file brief amicus curiae and to participate in oral arguments.
(N) Corcoran, J.

Apr 21 APPEARANCE of Lee Metcalf, pro se and appearance of C. Roger King as attorney for Sen. Metcalf. (1121 Dirksen Senate Office B.)

Apr 23 PROPOSED framing of the Constitutional issues in this action by pltffs.; Addendum 1 & 2; c/s 4/23/75.

Apr 23 PROPOSED statement of Constitutional issues by intervening defts. c/s 4/23/75.

Apr 23 STATEMENT of constitutional questions by defts.; c/s & c/m 4/23/75.

Apr 24 NOTICE by deft-intervenors, Common Cause and John W. Gardner to take deposition of Daniel Joy; attachment; c/s 4/24/75.

Apr 24 OPPOSITION by pltfs. to interrogatories propounded by intervening defts. Common Cause and John W. Gardner; attachment; c/s & c/m 4/24/75.

Apr 24 INTERROGATORIES by pltfs. to defts. and intervening defts.; c/s 4/24/75.

Apr 24 REQUEST by pltfs. for production of documents; c/s 4/24/75.

Apr 23 COMPLAINT of James C. Calaway as pltf-intervenor; c/m 3/10/75.

Apr 25 ORDER designating Judge Howard F. Corcoran to identify constitut. issues; take action and report to Three Judge panel.
(N) Corcoran, J., Bazelon, J., Robinson, J.

Apr 28 PROPOSED statement of constitutional issues by intervening pltf. James Calaway; c/m 4/25/75.

Apr 28 RESPONSE by federal defts. to proposed framing of the constitutional issues by pltfs.; c/s & c/m 4/28/75.

Apr 28 RESPONSE by pltfs. to proposed statement of constitutional issues by defts. and intervening defts.; Exhibit A; c/s & c/m 4/28/75.



Apr 28 REPLY by intervening defts. to proposed framing of the issues by pltfs.; Appendix A; c/s & c/m 4/28/75.

Apr 29 RESPONSE of defts. and intervening defts. to statement by pltfs. as to facts which should be found by Court; c/s & c/m 4/29/75.

Apr 30 RESPONSE by Common Cause to request by pltfs. for production of documents; c/s 4/29/75.

Apr 30 RESPONSE by Common Cause and John Gardner, intervening defts., to interrogatories by pltfs.; Attachments A thru D; c/s 4/29/75.

May 2 DEPOSITION of J. Daniel Mahoney for Common Cause.

May 2 DEPOSITION of Stewart Mott for Common Cause.

May 2 DEPOSITION of David A. Keene for Common Cause.

May 2 DEPOSITION of Eugene J. McCarthy for Common Cause w/Exhibit.

May 2 DEPOSITION of Thomas S. Winter for Common Cause.

May 2 DEPOSITION of Edward H. Crane, III w/Exhibit for Common Cause.

May 2 DEPOSITION of Clarke Reed for Common Cause.

May 2 DEPOSITION of Mary T. Monroe for Common Cause.

May 2 DEPOSITION of James C. Roberts for Common Cause w/Exh. 1 thru 9; 11, 12, 13.

May 2 SUPPLEMENTAL affidavit by pltfs. in support of response by pltfs.; Affidavit of Max Palevsky; c/s 5/2/75.

May 5 NOTICE by intervening defts., Common Cause & John W. Gardner to take deposition of Max Palevsky; c/s & c/m 5/2/75.

May 6 REQUEST by pltfs. for production of documents to Common Cause; c/m 5/6/75.

May 7 RESPONSE by deft-intervenors, Common Cause and John W. Gardner to request by pltfs. for production of documents; c/s & c/m 5/7/75.

May 8 DEPOSITION of James L. Buckley for Common Cause.

May 8 DEPOSITION of Ira Glasser for Common Cause.

May 8 DEPOSITION of William A. Steiger for Common Cause.

May 8 DEPOSITION of Laura Wertheimer for Common Cause.

May 8 DEPOSITION of Roland J. Cole for Common Cause.

May 8 DEPOSITION of Harry M. Fox for Common Cause.

May 8 DEPOSITION of Roland J. Cole (pages 135-348 Day Session) for Common Cause.

May 8 DEPOSITION of Roland J. Cole (pages 349-456 Evening Session) for Common Cause.



May 8 DEPOSITION of Leon J. Weil for Common Cause.

May 8 DEPOSITION of Daniel Joy for Common Cause.

May 8 LETTER, dated 5/6/75, from Dennis G. Linder to Judge Corcoran.
(fiat) Corcoran, J.

May 12 EXHIBIT 1 to deposition of Roland J. Cole filed May 8, 1975.

May 12 EXHIBITS (5) to deposition of Stewart Mott filed May 2, 1975.

May 12 EXHIBITS (1, 2, 3, 4, 5, 6, 9, 14, 15, 18, 23) to deposition of Eugene McCarthy filed May 2, 1975.

May 12 EXHIBIT No. 2 to deposition of Roland J. Cole filed May 8, 1975.

May 12 EXHIBITS (2) to deposition of Clarke Reed filed May 2, 1975.

May 12 EXHIBIT No. 1 to deposition of David A. Keene filed May 2, 1975.

May 12 EXHIBITS (7) to deposition of Daniel Joy filed May 8, 1975.

May 12 EXHIBITS (12) to deposition of Daniel Mahoney filed May 2, 1975.

May 12 MOTION of intervening deft., Susan B. King for substitution of parties; c/s & c/m 5/12/75.

May 13 TRANSCRIPT OF PROCEEDINGS, April 16, 1975, pages 1-32. Court's copy.
Reporter: Joan Curtis Blair

May 14 CERTIFICATE of service by pltfs. of copy of first amended complaint on John G. Murphy, Jr., Esq., General Counsel, Federal Election Commission by hand delivery on 5/14/75.
(fiat) Corcoran, J.

May 14 RESPONSE by Common Cause (10 Vols. 1972 Election Printouts) to request by pltfs. for production of documents.

May 14 ORDER substituting Louise D. Wides as intervening defendant instead of Susan B. King.
(N) Corcoran, J.

May 19 PART I: Findings of Fact agreed to by the parties. (N) Corcoran, J.

May 19 PART II: Statistical Findings of Fact.
(N) Corcoran, J.

May 19 Part III: Court Findings of Fact.
(N) Corcoran, J.

May 19 PART IV: Constitutional questions.
(N) Corcoran, J.

May 19 MEMORANDUM and order adopting findings of fact agreed to by the parties; adopting statistical findings of fact; certifying constitutional questions to the Court of Appeals and directing Clerk of U.S.D.C. to return augmented record to Clerk of U.S.C.A. forthwith.
(N) Corcoran, J.

May 19 RECEIPT from U.S.C.A. of entire file (two volumes), including depositions, transcripts and exhibits and a certified copy docket entries pursuant to forthwith order of May 19, 1975.



May 28 ORDER adopting certain findings submitted to the en banc court and framing certain constitutional issues the three-judge District Court will be called to decide Appendix A. (See Order for details)
(N) Corcoran, J.

May 28 ORDER joining argument in this case with argument in Buckley V. Valeo, No. 75-1061 (D.C. Cir.; to be heard by this court sitting with U.S.C.A. for D.C. Circuit en banc in the courtroom of U.S.C.A. at 9:30 am 6-13-75.
(N) Corcoran, J.

Jun 2 BRIEF for defts. Attorney General and Federal Election Commission; c/s & c/m 6/2/75.

Jun 2 BRIEF of intervening defts. on certified constitutional questions; Exhibit; c/s & c/m 6/2/75.

Jun 2 BRIEF of the plaintiffs (copy) w/Appendix A; c/s & c/m 6/2/75. (original filed in U.S.C.A. #75-1061)

Jun 3 BRIEF amicus curiae of Senator Lee Metcalf; c/m 6/3/75. (original filed in U.S.C.A. #75-1061)

May 29 ORDER directing parties to file three copies of all briefs as to Subtitle H with the Clerk of this Court and the Clerk of U.S.C.A. and granting parties until 2:00 P.M., 6/10/75, to file any additional briefs as to any issue pending before this Court.
(N) Bazelon, J., S. Robinson, J., Corcoran, J.

Jun 5 APPEARANCE of John G. Murphy, Jr. for deft. Federal Election Commission.

Jun 5 BRIEF of Federal Elections Commission.

Jun 5 BRIEF of Attorney General.

Jun 6 ORDER that oral argument adhere to provision of order of U.S.C.A. No. 75-1061 on 6/6/75.
Bazelon, J., S. Robinson, J., Corcoran, J.

Jun 12 COPY of response by pltfs. to amicus curiae motion by Senator Metcalf re time for oral argument; c/s 6/12/75. (orig. filed in U.S.C.A. #75-1061)

Jun 12 COPY of reply brief by pltfs.; Appendices (4); c/s 6/12/75. (orig. filed in U.S.C.A. #75-1061)

Jun 12 REPLY brief of intervening defts. on certified constitutional questions; c/s & c/m c/12/75.

Jun 12 DEPOSITION of Max Palevsky for defts. w/ exhibits.

Jun 12 REPLY brief for the Federal Election Commission.

Jun 13 TRIAL on the merits consolidated with en banc hearing in U.S.C.A. No. 75-1061 argued and taken under advisement.
(Reporter: Steven Miller, Hoover Reporting Co.) Bazelon, J., S. Robinson, J., Corcoran, J.

Jun 13 REPLY brief for defts., Attorney General and Federal Election Commission; c/s 6/12/75.

Jun 25 APPLICATION by pltfs. for temporary restraining order; P & A's; table of authorities; c/s & c/m 6/25/75.



Jun 25 APPLICATION by pltfs. for preliminary injunction; Memorandum; table of authorities; affidavit of Arthur F. Fergenson; c/s & c/m 6/25/75.

Jun 26 WITHDRAWAL of motion for temporary restraining order and for preliminary injunction w/o prejudice per atty. for pltfs.

Jul 24 TRANSCRIPT OF PROCEEDINGS; 6-13-75; pages 1-171; Courts copy; (Rep: S. Miller)
(Hoover Reporting Company, Inc.)

Aug 15 ORDER confirming action and report of Judge Howard F. Corcoran of 5-28-75 (N).
Bazelon, J., S. Robinson, III, J., Corcoran, J.

Aug 15 JUDGMENT answering certain questions in connection with Subtitle H of the Internal Revenue Code of 1954; making certain findings; denying injunctive relief sought by the pltffs and dismissing cause (N).
Bazelon, J., S. Robinson, III, J. Corcoran, J.

Aug 18 CERTIFIED copy Order USCA dated 8-15-75 amending opinion filed 8-15-75.

Aug 18 CERTIFIED copy of opinion from U.S.C.A., dated 8-15-75.
(Fiat) Corcoran, J.

Aug 18 COPY of First Amended complaint for declaratory and injunctive relief c/s 2-7-75
(Fiat) Corcoran, J.

Aug 19 ORDER certifying and transmitting Certified copy of Memorandum and Order, including Parts I-IV as part of any record on appeal.
(N) Corcoran, J.

Aug 21 NOTICE of appeal to the Supreme Court by pltfs. from order of August 15, 1975; c/s 8-21-75. $5.00 paid and credit to U.S. by Ryan.

Aug 21 REQUEST by pltfs. to certify record to Supreme Court.



**Docket Entries in the United States Court of Appeals for the District of Columbia Circuit**

| DATE | FILINGS – PROCEEDINGS |
|---|---|
| **1975** | |
| Jan 24 | Certified Original Record from the United States District Court (Certified to this Court pursuant to Title 2 Section 315 (a) |
| Jan 29 | 10 - Plaintiffs' response to motion to dismiss and opposition to application for a three-judge court filed in the U.S. District Court for the District of Columbia |
| Jan 29 | 10 - Plaintiffs' opposition to motion to dismiss |
| Jan 31 | 10 - Motion of The Center for Public Financing of Elections, et al., for leave to Intervene |
| Feb 7 | 10 - Plaintiffs' first amended complaint for declaratory and injunctive relief |
| Feb 19 | Per Curiam order that this matter is preliminarily deemed to have been properly certified to this Court by the District Court below, pursuant to Section 315 (a) of the Federal Election Campaign Act, as amended; This Court shall proceed to consider the instant matter en banc pursuant to Section 315 (a), 28 U.S.C. §46 (c) and Rule 35 (a), Fed. R. App. P.; the Clerk inquire of each of the parties by letter as to their expectations regarding the need for the taking of evidence, or the hearing of witnesses, so that appropriate procedures may be considered for adoption by the Court; the parties file additional |

memoranda and/or briefs on the jurisdictional questions (including both the motion to remand and the motion to dismiss) according to the following schedule: Defendants – shall file 20 days of the entry of this order; Plaintiffs – shall file their answering papers within 15 days thereafter; Defendants – a reply, if any, shall be filed within 5 days; the Clerk shall thereafter schedule oral argument on all jurisdictional contentions; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, CJ

Feb 11 4 - Defendants' motion for remand and suggestion for further proceedings

Feb 27 Per Curiam order that the Center for Public Financing of Elections Common Cause, the League of Women Voters of the U.S., Chellis O'Neal Gregory, Norman P. Jacknis, Susan B. King, Daniel R. Noyes, Mrs. Edgar B. Stern, Charles P. Taft, John W. Gardner, and Ruth Clusen are granted leave to intervene under Rule 24 Fed. R. Civ P. and Shall conduct themselves according to the briefing schedule in the order entered by this Court on February 19, 1975; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, CJ

Mar 4 4 - Intervenor's Proposed procedures

Mar 4 4 - Defendant's Proposed procedures

Mar 4 4 - Plaintiff's Proposed procedures

Mar 11 25 - Defendant's supplemental memorandum in support of Motion to dismiss and motion to



remand (Valeo, Jennings, Staats, and Levi)

Mar 11 25 - Answer of Intervening Defendants to First Amended complaint (Center for Public Financing of Election et al., and Common Cause)

Mar 12 25 - Motion of James C. Calaway of Houston, for leave to intervene as a party plaintiff

Mar 11 25 - Supplemental brief of Intervenor Center for Public Financing of Election, et al. and Common Cause)

Mar 13 4 - Motion of Intervenor James C. Calaway for clarification of motion to intervene as a party plaintiff

Mar 14 Per Curiam order that the parties file proposed findings of fact, and in conjunction with each such separate proposed finding shall file a documented offer of proof in support thereof, such documented offer to consist of actual documents, affidavits, depositions, or other evidence in tangible form, these filings to be made by April 3rd, within 15 days of of the above filing date, the parties will file respone indicating which of the first round of submitted proposed findings of fact they admit, which they admit in part, and which they deny; as to those proposed findings of fact in whole or in part not admitted, each party will that day file documented offers of proof establishing what it submits the fact to be; oral argument on the pending motions to remand and to dismiss will be heard on April 2, 1975; Counsel will be notified as to the time for oral argument at a later date; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Mar 20 25 - Defendants' notice to take deposition upon oral examination

Mar 20 25 - Interrogatories to Plaintiffs

Mar 20 25 - Defendants' request for admissions

Mar 20 25 - Defendants' first request for production of documents

Mar 26 25 - Plaintiffs' opposition to motion for remand and suggestion for further proceedings

Mar 26 25 - Plaintiffs' supplemental opposition to motion to dismiss

Mar 26 25 - Motion of Lee Metcalf, United States Senator, for leave to file brief as Amicus Curiae and to participate in oral argument on the merits

Mar 26 25 - Interrogatories to Plaintiffs

Mar 26 Per Curiam order that consideration of applicant's motion to intervene be deferred until after the hearing on April 2, 1975 of the pending motions to dismiss and to remand; the applicant is permitted to file an amicus curiae brief no later than Tuesday, April 1, 1975 for the purpose of presenting his views on the pending motions; CJ Bazelon, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Mar 28 Per Curiam order en banc sua sponte, that the following schedule for oral argument is adopted for Wednesday, April 2, 1975; On the Motion to dismiss; Federal Defendants/movant plaintiffs/ respondent - both 15 minutes; On the motion

to remand: Intervening defendants/movant Common Cause, Gardner - 8 minutes; intervening defendants/movant Center, League and seven named individuals - 8 minutes; Federal defendants/movant 14 minutes; Plaintiffs/respondent - 30 minutes; these time limits are subject to the qualification that they may be extended if the Court finds it useful in the interest of Justice and a full and fair hearing; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

Mar 31 25 - Reply Brief of Intervening-defendants in support of motion to remand

Mar 31 25 - Preliminary Response to Defendants discovery filings

Apr 1 25 - Plaintiffs' motion for procedural order

Apr 1 25 - Defendants' motion to compel discovery

Apr 3 25 - Plaintiffs' Statement of Facts

Apr 3 25 - Documents supporting Plaintiffs' statement of facts

Apr 3 25 - Affidavits Supporting Plaintiffs' statement of facts

Apr 2 Argued before CJ Bazelon; McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ; The Court announced that Circuit Judge Wright is a member of this En Banc hearing, but is unable to be present; the case will be submitted to him on the briefs and tape recording of oral argument; On motion by David J. Anderson, Dennis G. Linder a member of



the bar of the Supreme Court of Iowa was allowed to argue pro hac vice for Federal Defendants

Apr 4 25 - Proposed findings of fact of defendants and intervening defendants Center for Public Financing of Elections, League of Women Voters of the United States, Clusen, Gregory, Jacknis, King, Noyes, Stern and Taft

Apr 4 25 - Proposed finding of fact of intervenor-defendants common cause and John Gardner and offer of proof filed pursuant to the court order of March 14, 1975

Apr 4 Exhibits by Defendants and Intervening-defendants Center for Public Financing of Elections, League of Women Voters of the United States, Clusen, Gregory, Jacknis, King, Noyes, Stern and Taft

Apr 8 10 - Notice of Taking Deposition of Thomas S. Winter, et al

Apr 8 25 - Response of Defendants and Intervening defendants to plaintiffs' motion for procedural order

Apr 10 10 - Notice of Taking Deposition of Laura Wertheimer

Apr 10 10 - Notice of Taking Depositon of Harry M. Fox

Apr 11 25 - Response in opposition to federal defendants' and intervening defendants' motion to compel discovery

Apr 11 25 - Defendants Valeo, Jennings, Staats, and Levi Notification to the court

Apr 14 Per Curiam order that the motion to remand the record is granted to the extent indicated in the attached memorandum; the record herein is re-

manded together with the second round of filings of proposed findings of fact and supporting documents due on April 18, 1975 pursuant to our order of March 14, 1975; the District Court shall return the record to this Court as soon as possible, but in no event later than May 19th; final action by this Court on defendants' motion to dismiss is deferred pending return of the record; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ; Chief Judge Bazelon dissents for the reasons set forth in his attached statement

Apr 14 (Record was picked up by Judge Corcoran's Law Clerk, therefore there is no receipt)

Apr 15 Per Curiam order that the briefing schedule for a hearing before this Court on a date to be decided later shall be as follows; 14 days after return of the record to this Court, all parties will file their opening briefs; ten days thereafter all parties will file their reply briefs; Judge Corcoran receive a copy of this order; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Apr 15 Certified copy of the above order sent to Judge Corcoran

Apr 21 25 - Plaintiffs' response to proposed findings of fact of defendants and intervening defendants Center for Public Financing of Elections, League of Women Voters of The United States, Clusen, Gregory, Jacknis, King, Noyes, Stern and Taft

Apr 21 25 - Response of defendants and intervening defendants to plaintiffs' proposed findings of fact

Apr 22 25 - Affidavit signed by Morris Udall offered as



proof in support of defendants' response to plaintiffs' proposed findings of fact (OK to file, Per RDP)

May 15 Per Curiam order en banc, sua sponte, that this case is hereby scheduled for oral argument at 2:00 P.M., Friday, June 13, 1975; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

May 19 Certified Original Record on Remand [Certified to this Court pursuant to Title 2, Section 315(a)] (2 Volumes Original Record with one volume transcript, 1 box containing 16 depositions, 4 volumes bound in manila folders [Part I-Findings of Fact Agreed to by Parties, Part II-Statistical Findings of Fact, Part III- Court Findings of Fact, Part IV-Constitutional Questions] and 10 volumes of exhibits with blue covers)

May 23 25 - Motion of United States for leave to file amicus curiae brief in excess of page limitations

May 23 25 - Joint motion of plaintiffs and intervening defendants for leave to file briefs in excess of page limitations

May 28 Per Curiam order sua sponte, that oral argument in this case be presented jointly with oral argument in Buckley v. Valeo, Civ. No. 75-0001 (D.D.C.) to this Court sitting with the three judge District Court convened to consider the complaint in that case, in the courtroom of this Court on June 13, 1975 at 9:30 a.m; CJ Bazelon; and Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

May 28 Per Curiam order by the Clerk for the Court, sua sponte, that the oral argument presently

scheduled for 2:30 P.M., on Friday, June 13, 1975 is hereby rescheduled for 9:30 A.M. on Friday, June 13, 1975

May 29 Per Curiam order that the pending motion for leave to intervene as a party plaintiff of James C. Calaway filed in this Court on March 12, 1975, and the pending motion for leave to file brief as amicus curiae and to participate in oral argument on the merits of Lee Metcalf, U.S.S. filed in this Court on March 26, 1975 are hereby granted; the Clerk shall modify the docket to reflect the substitution of parties; CJ Bazelon; and Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

May 29 25 - Intervenor's complaint for declaratory and injunctive relief

May 30 Ordered by the Court en banc that motion of plaintiffs and intervening defendants for leave to file briefs in excess of page limitation is granted and plaintiffs and intervening defendants are granted leave to file briefs as follows: Plaintiffs principle briefs 225 pages standard (320 by other means), Intervening Defendants principle briefs 200 pages standard (280 by other means), Plaintiffs reply brief 88 pages standard (124 by other means) and Intervening Defendants reply brief 75 pages standard (105 by other means); CJ Bazelon, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 2 25 - Brief of Intervening Defendants on certified constitutional questions



Jun 2 25 - Brief Amicus Curiae of United States Senator Lee Metcalf

Jun 2 25 - Brief of the Plaintiffs

Jun 3 11 - Motion of Defendants Attorney General and Federal Election Commission to file briefs in excess of the page limitations of Rule 28(g)

Jun 2 25 - Brief for the Federal Elections Commission

Jun 6 Per Curiam order en banc that the motion of the Attorney General of the U.S. and the FEC to file briefs in excess of the page limitations of Rule 28 (g) is granted; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 6 25 - Brief for defendants Attorney General and FEC

Jun 6 25 - Brief for the Defendant Attorney General

Jun 6 15 - Statement of Plaintiff-Intervenor James Calaway

Jun 6 10 - Letter from Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Jun 9 Per Curiam order en banc sua sponte, that the following schedule for oral argument to this Court and to the three-judge court in Buckley v. Valeo, 75-0001, (D.D.C.) sitting together on June 13, 1975 is adopted; Against the Challenged Acts – plaintiffs, Intervening Plaintiff, Amicus curiae – One and One-half hours to be divided among the parties as they see fit; For the Challenged Acts – Defendants, Intervening Defend-

ants – One and one-half hours to be divided among the parties as they see fit;
If the parties representing each side can not agree upon a division of time, the court will decide; the parties are advised that the Court has the prerogative of expanding the time of oral argument should justice so require; Argument will be heard at 9:30 a.m., on Friday, June 13, 1975, in the Ceremonial Courtroom, Sixth Floor, U.S. Courthouse; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

Jun 6 11 - Motion of Amicus Curiae (Metcalf) for leave to file brief in form other than printed

Jun 12 25 - Plaintiffs' Reply Brief

Jun 12 10 - Letter from Counsel for Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Jun 12 25 - Reply Brief of Intervening Defendants on Certified Constitutional Questions

Jun 12 15 - Motion of Amicus Curiae (Metcalf) for allocation of time in oral argument

June 12 25 - Plaintiffs' response to Amicus Curiae's motion respecting the time for oral argument

Jun 12 25 - Reply Brief for the Federal Election Commission

June12 25 - Intervening Defendants (Common Cause and John W. Gardner) motion for leave to file supplemental reply brief

Jun 12 25 - Motion of Intervening Defendants Common



Cause and John W. Gardner for leave to file supplemental reply brief in excess of the page limitations of Rule 28(g)

Jun 12 25 - Reply Brief for Defendants Attorney General and Federal Elections Commission

Jun 12 Per Curiam order en banc that the motion of amicus curiae for leave to file a brief in other than printed form filed June 6, 1975 is granted and the Clerk is directed to file the brief of amicus curiae; CJ Bazelon, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, and Wilkey, CJ

Jun 12 25- Brief amicus curiae of U.S. Senator Lee Metcalf

Jun 13 Per Curiam order en banc that the motion of intervening defendants for leave to file supplemental reply brief in excess of the page limitations is granted and the Clerk is directed to file intervening defendants' reply brief; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 13 15 - Supplemental reply brief of intervening defendants' Common Cause and John Gardner

Jun 13 Per Curiam order en banc that amicus curiae is granted 10 minutes time at oral argument independent of the times already allotted to the other parties; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Jun 13 Argued before CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and

Wilkey, CJ, sitting en banc; On motion by Brice M. Clagett, Ralph Winter a member of the bar of the Supreme Court of Connecticut was allowed to argue pro hac vice for plaintiffs; On motion by David J. Anderson, Dennis G. Linder a member of the bar of the United States District Court for the District of Columbia was allowed to argue pro hac vice for defendants

Jun 13 Letter from counsel for intervening defendants' advising of additional authorities pursuant to Local Rule 8(g)

Jul 24 Letter from Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Jul 25 4 - Motion of Roy A. Schotland for leave to file memorandum as Amicus Curiae

Jul 25 25 - Letter from Plaintiffs advising of additional authorities pursuant to Local Rule 8(g)

Aug 1 Per Curiam order that the motion of Roy A. Schotland for leave to file a memorandum as amicus curiae is denied as untimely; Bazelon CJ, Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey CJ

Aug 15 Per Curiam Opinion.

Aug 15 Separate opinion filed by Chief Judge Bazelon dissenting from Part V-A-2 of the op.

Aug 15 Separate opinion filed by Circuit Judge Tamm, joined in by Judge Wilkey, dissenting from Parts IV, VI, and VII of the per curiam opinion.

Aug 15 Separate opinion filed by Circuit Judge MacKinnon dissenting from Part VII of the op.



Aug 15 Per Curiam Order answering the certified constitutional questions. See Appendix A of the Per Curiam Opinion.

Aug 15 Per Curiam order that the opinion filed this date in this case is amended as follows: On page 1570, second column, third and fourth lines delete the words "private for public" and substitute therefor the words "public for private".; CJ Bazelon; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon and Wilkey, CJ

Aug 22 Plaintiffs' notice of appeal to the Supreme Court of the United States

Aug 22 Letter from plaintiffs requesting record be transmitted to the Supreme Court

Aug 22 Receipt dated August 22, 1975 from the Clerk, Supreme Court for the original and supplemental records (8 volumes) and two boxes of transcripts and exhibits; notice of appeal; certified copy of the docket entries, opinion and order of this court dated August 15, 1975 and items 1 thru 100 (excluding items 41, 42 and 80) on this docket card

Aug 25 1 - Bill of Costs of Attorney General

Aug 25 1 - Bill of Costs of Attorney General and Federal Election Commission (Dept. of Justice)

Aug 29 10 - Plaintiffs' motion for leave to amend notice of appeal

Aug 29 Per Curiam order sua sponte amending opinion of 8-15-75, (By Chief Deputy Clerk)

Sept 2 Order of 4-14-75 released in printed opinion form this date.

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**Memorandum and Order of District Court**
**(January 24, 1975)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

MEMORANDUM AND ORDER

In their complaint the plaintiffs seek declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 *et seq.* (Supp. II, 1972); the Federal Election Campaign Act Amendments of 1974, *Pub. L. No.* 93-443, 88 Stat. 1263; and Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. § 9001 *et seq.* (Supp. III, 1973), *as amended, Pub. L. No.* 93-443, 88 Stat. 1263, and against their enforcement by the defendants. The grounds of the complaint are that the statutes deprive them of the right to petition for redress of grievances, deprive them of the right of privacy, deprive tnem of due process of law and discriminate invidiously against them, all in violation of the First, Fourth, Fifth and Ninth Amendments to the Constitution. Further alleged grounds are that the mode of appointment and confirmation of members of the Federal Election Commission and its purported power to administer, interpret, make rules and enforce said statutes is in violation of the constitutional separation of powers. The charges are detailed in paragraphs 52 through 84 of the complaint.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 2201-2202, and § 315(a) of the Federal Election Campaign Act of 1971, 88 Stat. 1285, 2 U.S.C. § 437h [hereinafter cited as § 315(a)].



Since they seek an injunction restraining the enforcement of an act of Congress, plaintiffs also seek to convene a three-judge district court, pursuant to 28 U.S.C. §§ 2282, 2284. The defendants have opposed that motion. Further, pursuant to § 315(a), plaintiffs request this Court to certify immediately all questions of constitutionality raised by the complaint to the United States Court of Appeals for the District of Columbia Circuit.[1]

The plaintiffs are four individuals (two of whom are Members of Congress, and one former Senator) and five organizations. The defendants are the Secretary of the United States Senate, the Clerk of the House of Representatives, the Comptroller General, the Attorney General and the Federal Election Commission.[2]

I

The Federal Election Campaign Act of 1971 as amended by the 1974 Amendments covers very comprehensively all aspects of the financing and conduct of future Federal elections, and the complaint is correspondingly broad, in that it attacks most of the key provisions of the Act on various

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[1] Plaintiffs also seek to have the defendants' time in which to respond to the complaint reduced from 60 days to 30 days. *Fed. R. Civ. P.* 12(a). In view of the fact that the defendants have moved to dismiss, plaintiffs' request is now moot.

[2] The 1974 Amendments to the Federal Election Campaign Act provide that the Act shall be administered by a "Federal Election Commission." 2 U.S.C. § 310(a). Until the Commission is qualified, the Comptroller General, the Secretary of Senate, the Clerk of the House of Representatives "shall continue to carry out their responsibilities under Title I and Title III of the Federal Election Campaign Act of 1971." 2 U.S.C. § 315(b). The Commission has not yet been established.

constitutional theories. But, at this particular juncture, we focus only upon the meaning and effect of § 315 (a).[3]

Section 315 establishes a unique procedure for judicial review of actions arising under the Act which raise constitutional issues. It authorizes the Federal Election Commission, the national committee of a political party, or any individual eligible to vote in any election for the office of President to bring an appropriate action in a district court to test the constitutionality of any provision of the Federal Election Campaign Act of 1971, *as amended,* or of Sections 608, 610, 611, 613, 614, 615, 616, or 617, of Title 18, United States Code.

The District Court in which a complaint is lodged is required to certify "immediately" all constitutional questions to the Court of Appeals for its Circuit, which, in turn, is required to hear and determine those questions sitting *en banc.*

The judgment of the Court of Appeals on the constitutional questions, in turn, is reviewable by direct *appeal* to

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[3] Section 315(a) provides:

"Sec. 315(a) The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President of the United States may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code. The district court immediately shall certify all questions of constitutionality of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc."



the Supreme Court, and any such appeal must be brought within 20 days of the decision of the Court of Appeals. Finally, both the Supreme Court and the Court of Appeals are required to expedite any matter certified by the District Court.

These unusual review provisions pose several rather obvious questions for the District Court, *in limine, viz.:*

(1) Should the District Court make an initial determination as to constitutionality?

(2) If so, must a three-judge court be convened for that purpose?

(3) Should the District Court explore such preliminary matters as to the standing of each of the parties to bring a complaint?

As this Court construes § 315(a) and the legislative history of *Pub. L. No.* 93-443, the answer to each of the foregoing questions is in the negative.

The very essence of § 315, as the Court reads it, is speedy judicial review. The District Court is mandated "immediately" to certify questions of constitutionality to the Court of Appeals, § 315(a); the Court of Appeals is mandated to hear the case *en banc,* thus by-passing the normal panel determination, § 315(a); and the decision of the Court of Appeals, *en banc,* is reviewable by a direct appeal to the Supreme Court to be brought no later than 20 days after the decision of the Court of Appeals, § 315(b). It is to be further noted that it is the statutory duty of the Court of Appeals and of the Supreme Court to advance the case on their respective dockets and expedite the case "to the greatest possible extent." § 315(c). Such a mandated procedure would not seem to permit any activity on the part of the District Court which would involve the usual delay pending answer, briefing, argument and con-

sideration, provided only that a substantial constitutional question is raised by a complaint and that complaint is filed by a party having standing to lodge it.

The legislative history, although somewhat sparse, would seem to bear out these conclusions.

## II

The 1974 Amendments to the Federal Election Campaign Act of 1971 became law October 15, 1974. *Pub. L. No.* 93-443. It immerged from S. 3044 and its House counterpart, H.R. 16090.[4]

The original S. 3044 was introduced in the Senate February 21, 1974. It did not include provisions for special review of constitutional issues as is now provided by § 315(a).

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[4] As a "clean" bill, S. 3044 had no hearings held on it. The same applies to its House counterpart, H.R. 16090. In the previous session of the Ninety-third Congress, however, there were numerous measures introduced in both the Senate and the House concerning various aspects of public financing of Federal elections. A number of those measures were accompanied by hearings. For example, in the Senate, *see Hearings on S. 1103, S. 1954 & S. 2417 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration,* 93d Cong., 1st Sess. (1973); *Hearings on S. 23, S. 343, S. 372, S. 1094, S. 1189, S. 1303, S. 1355 & S.J. Res. 110 Before the Subcom. on Privileges and Elections of the Senate Comm. on Rules and Administration,* 93d Cong., 1st Sess. (1973). In the House, *see Hearings on H.R. 7612 & S. 372 Before the Subcomm. on Elections of the House Comm. on House Administration,* 93d Cong., 1st Sess. (1973) (2 vols.). In none of those bills was there a judicial review procedure precisely the same as § 315(a). It should be noted, however, that § 2(a) of S. 2417, to add a § 514(b) in a new Title V of the Federal Election Campaign Act of 1971, has (continued)



The history of the present § 315 is as follows:

(1) On April 10, 1974 Senator Buckley of New York (a plaintiff herein) introduced without objection an amendment to S. 3044, which read as follows:

EXPEDITIOUS REVIEW OF
CONSTITUTIONAL QUESTIONS

• • •

JUDICIAL REVIEW

"Sec. 407. (a) The Federal Election Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this Act or of Chapter 29 of title 18, United States Code. The district court shall immediately certify all questions of constitutionality of this Act to the United States court of appeals for that circuit, which shall hear the matter sitting en banc.

"(b) Notwithstanding any other provision of law or rule any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such

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[4] (continued)
similar language to that of § 315 but without the "immediate certification" provision of § 315(a). *See Hearings on S. 1103, S. 1954 & S. 2417 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration,* 93d Cong., 1st Sess. 495 (1973).

appeal must be brought within 20 days of the court of appeals decision.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any question certified under subsection (a)."

The amendment was accepted without vote. *Id.* At the time Senator Buckley submitted his amendment he remarked:

> . . . (The amendment) merely provides for the expeditious review of the constitutional questions I have raised. I am sure we will all agree that if, in fact, there is a serious question as to the constitutionality of this legislation, *it is in the interest of everyone to have the question determined by the Supreme Court at the earliest possible time.* *Id.* (Emphasis added.) 120 *Cong. Rec.* S5707 (daily ed. April 10, 1974).[5]

(2) S. 3044, as thus amended, was referred to the House Administration Committee on April 22, 1974.

(3) On July 24, 1974, the House version designated

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[5] *See also* the remarks of Representative Frenzel, one of the House minority conference managers of S. 3044, during the floor debate in the House concerning S. 3044, who stated: "(A)ny individual under this bill has a direct method to raise these (constitutional) questions and to have those considered *as quickly as possible by the Supreme Court.*" 120 *Cong. Rec.* H10336 (daily ed. Oct. 10, 1974). (Emphasis added). He also said that, in his view, "there are at least 100 items questionable from a constitutional standpoint in (S. 3044)." *Id.*



as H.R. 16090 was introduced in the House with the Buckley amendment included and was eventually reported out of committee with the amendment still included.

(4) On October 7, 1974, the Conference Report was filed with both the House and Senate. It was accepted by the Senate on October 8, 1974 and by the House October 10, 1974.

(5) Significantly, in conference, the authorization in the Buckley amendment "to institute such actions in the appropriate District Court including actions for declaratory judgment or injunctive relief as may be appropriate to implement or construe any provision of this Act," was changed to authorize actions "to construe the constitutionality of any provision of this Act or of Sections 608, 610, 611, 613, 614, 615, 616, or 617 of Title 18 U.S.C.." The power "to implement" the Act is deleted.

Where the change originated is not clear. It is not reported in hearings or debates. The comment in the Conference Report simply says:

> The conference substitute generally follows the House amendment and makes it clear that these special judicial review provisions are available only for actions directed at determining the constitutionality of provisions of the Act and of provisions of title 18, United States Code, related to the activities regulated by the Act. *S. Conf. Rep. No.* 1237, 93d Cong., 2d Sess. 96 (1974).

III

We would look, as well, to other provisions of the Federal Election Campaign Act of 1971 and Subtitle H of the

Internal Revenue Code of 1954 having some bearing on District Court activities in given situations.

A. § 314 of the 1971 Act sets out the enforcement powers of the Federal Election Commission and includes, *inter alia*, authorization for the Commission to institute suit in a District Court to implement its findings by injunctive or other appropriate relief. In such a case the action of the District Court is reviewable in the usual way by the Court of Appeals and then by way of *certiorari* to the Supreme Court. Of course, in such a case the Commission would be the plaintiff exercising its enforcement powers, while the present case represents a challenge by outside parties to the constitutionality of certain provisions of the Act. Presumably, a challenge to Commission procedures instituted under § 314 on constitutional grounds would invoke the application of § 315(a).

B. Section 9011(b)(1) and (2) of Title 26, U.S.C., to some extent would seem to cloud the meaning and effect of § 315(a).

Chapter 95 of Subtitle H was enacted to implement the so-called "dollar check-off." As originally enacted, it was not a part of the Federal Election Campaign Act of 1971. However, in 1974 the amendments to the 1971 Act and to Subtitle H were embraced within the same general framework, thus bringing them under the same umbrella, presumably to be construed compatibly.

Section 9011(b)(1) of Title 26, U.S.C., like § 315(a), authorizes the Federal Election Commission, the national committee of any political party, and any individual eligible to vote in any election for the office of President "to institute such actions, including actions for declaratory judgment or injunctive relief as may be appropriate to



implement or construe any provision of ... Chapter (95)."[6] However, § 9011(b)(2), unlike § 315(a), expressly provides that any such suits are to be heard and determined by a court of three judges in accordance with the provisions of § 2284 of Title 28, U.S.C.

Thus, although the Federal Election Campaign Act of 1971, the Federal Election Campaign Act Amendments of 1974, and Subtitle H of the Internal Revenue Code of 1954, are laws *pari materia* and form a cohesive all-embrasive framework as far as Federal elections are concerned, there is, nevertheless, inconsistency between the judicial review called for under § 315(a) and that required by § 9011 (b)(2).

Giving effect to the rule that all provisions of an act must be construed to give effect to its ultimate purpose,[7] the two provisions must be reconciled, unless we are to hold that a complaint, such as that at bar, challenging both the Subtitle H provisions, and the other provisions of the Act, is somehow to be bifurcated to give the two different parts of the 1974 Amendments different procedural treatment. We arrive at that reconciliation by concluding

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6 Chapter 95 of Subtitle H of the Internal Revenue Code of 1954, 26 U.S.C. § 9001 *et seq.* (Supp. III, 1973), is the Presidential Election Campaign Fund Act, the so-called dollar check-off.

*Pub. L. No.* 93-443, the 1974 Amendments, also added a new Chapter 96 of Subtitle H, the Presidential Primary Matching Payment Account Act. 88 Stat. 1297, 26 U.S.C. § 9031 *et seq.*

The 1974 Amendments substituted "Federal Election Commission" for "Comptroller General" in 26 U.S.C. § 9011(b). *See* § 404(c)(21) of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1293.

7 2A *C. Sands, Sutherland Statutory Construction* § 46.05, at 56-57 (4th ed. 1973).

that Congress, in its most recent pronouncement, namely § 315(a), directed that the constitutionality of "*any* provision of this Act"[8] is to be processed as provided in § 315(a) and that to the extent that § 315(a) is, or appears to be, inconsistent with the earlier enacted Chapter 95 of Subtitle H, § 315(a) is to control.

Notwithstanding any apparent inconsistencies or conflicts noted above, this Court is convinced that the overriding concern of Congress was to provide swift judicial review of *all* constitutional questions engendered by the passage of the 1974 Amendments, and to have all those questions, when properly framed in a single complaint, decided together rather than in a piecemeal fashion. Surely Congress could not have intended the unworkable result that would follow were this Court to convene a three-judge district court to decide plaintiffs' Chapter 95, Subtitle H claims, while the remainder of their claims proceeded directly to the Court of Appeals under § 315(a).[9]

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[8] Emphasis added. "This Act" is, of course, the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974. Section 315(a), as noted *supra*, was added by § 208(a) of the 1974 Amendments as a new section of Title III of the 1971 Act.

[9] Cf. United States v. Walton, No. 74-1790 (D.C. Cir. Jan 23, 1975), Slip Op. at 8:

> We note in conclusion that many rules of statutory construction place the courts in an unco-operative position with regard to legislative intent. Judicial protection of significant statutory and constitutional interests at times require courts to demand a "clear statement" of intent before deferring to a legislative judgment. There always comes a point, however, where the legislative intent is as clear as is humanely possible and at that point the courts must defer or exercise their constitutional responsibilities.



## IV

The foregoing dictates the conclusions that Congress contemplated that any constitutional challenge to any provision of the Act would be processed through the lower courts to the Supreme Court with a minimum delay, and that to obviate as much delay as possible,[10] the only function of the District Court would be to screen the complaint for determination of whether a constitutional issue was raised and whether it was raised by persons having the statutory authority to do so.[11] The Court accordingly will certify the entire proceeding to the Court of Appeals forthwith.

Further, the Court concludes that a three-judge district court is not required in the present case. The plain statutory language indicates the unequivocal intent of Congress to establish an *ad hoc* procedure for judicial review of the statutes in question. The procedure established by § 315(a) is clearly inconsistent with that found in 28 U.S.C. §§ 2282 and 2284. Under § 2284 the three-judge district court hears and determines the questions presented on the merits. From its judgment there is a direct appeal to the Supreme Court. 28 U.S.C. § 1253. That procedure, itself an ex-

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[10] On this question of urgency and the problems attendant to any delay in resolving the constitutional questions, *see* Washington Post, Jan 18, 1975, at A4, col. 1; Washington Star-News, Jan 19, 1975, at E3, col. 1.

[11] ". . . Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court . . . ." Battaglia v. General Motors Corp., 169 F.2d 254, 257 (2d Cir.), *cert. den.*, 335 U.S. 887 (1948) (citation omitted).

ception to the usual Supreme Court review, has obviously been supplanted by § 315(a).[12]

V

In light of the above, the Court holds (1) that § 315(a) mandates that this Court must certify immediately to the Court of Appeals all well-pleaded constitutional questions, without in the first instance making a determination as to such constitutionality, and (2) that a three-judge district court is not required to be convened for this case.[13]

The Court specifically finds that the plaintiffs raise substantial constitutional questions, and that at least the four individual plaintiffs have standing to seek judicial review of the provisions in question.[14]

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[12] It would be anomalous indeed to convene a three-judge district court in this case, where at least one member of the court would have to be a Circuit Judge, and then to certify the case to the Court of Appeals, at which point the Circuit Judge who sat on the three-judge district court would seemingly have to recuse himself, thus obviating the congressional design that the case be heard by the Court of Appeals *en banc*.

[13] This case, then, is distinguishable from American Civil Liberties Union v. Jennings, 366 F. Supp. 1041 (D.D.C. 1973), *prob. juris. noted sub. nom.* Staats v. American Civil Liberties Union, 417 U.S. 944 (1974), a three-judge district court, which held unconstitutional § 104 (b) of the Federal Election Campaign Act of 1971, 47 U.S.C. § 803(b) (Supp. III, 1973).

In that regard, the Court notes that § 205(b) of the Federal Election Campaign Act Amendments of 1974 repealed Title I of the Federal Election Campaign Act of 1971, 47 U.S.C. §801 *et seq.* (Supp. III, 1973).

[14] It is not so clear, however, that each of the five organizational plaintiffs possesses the same requisite standing. This is so because obviously none is eligible to vote for the office of President in any election. It is unclear, in the present procedural posture of plaintiffs' case,

(continued)



Further, the Court declines to rule on the defendants' motion to dismiss. As on the question of organizational standing, the matters raised in the motion to dismiss are more properly left to the initial determination of the Court of Appeals.

VI

Accordingly, it is this 24th day of January, 1975,

ORDERED AND ADJUDGED that plaintiffs' application for a three-judge district court be, and the same is hereby, denied; and it is further

ORDERED AND ADJUDGED that the constitutional questions raised by plaintiffs in their complaint be, and the same are hereby, certified immediately to the United States Court of Appeals for the District of Columbia Circuit; and it is further

ORDERED AND ADJUDGED that the Clerk of this Court shall, as soon as practicable, transmit the entire file of the instant case to the Clerk of the Court of Appeals for this Circuit.

/s/ Howard F. Corcoran
Judge

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[14] (continued)
whether any of the named organizational plaintiffs may be "the national committee of any political party" within the meaning of the relevant statute. Since at least some of the plaintiffs have the requisite standing, and since the ultimate decision as to the standing of others may have to await further exploration, in the interests of time, this Court defers to the Court of Appeals on that issue.

**First Amended Complaint for Declaratory and Injunctive Relief (February 7, 1975)**

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

[Caption Omitted in Printing]

JURISDICTION

1. This action seeks declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 3, 2 U.S.C. Sections 431 *et seq.* (hereinafter referred to as the FECA), the Federal Election Campaign Act Amendments of 1974, Public Law 93-443, 88 Stat. 1263 (hereinafter referred to as the FECA Amendments), and Subtitle H of the Internal Revenue Code of 1954, Public Law 92-178, 85 Stat. 562, as amended by Public Law 93-53, 87 Stat. 138, 26 U.S.C. Sections 9001 *et seq.* (hereinafter referred to as Subtitle H), and against their enforcement by the defendants, on the grounds that the FECA, the FECA Amendments, and Subtitle H deprive the plaintiffs of freedom of speech and association, of the right to petition for redress of grievances, of the right of privacy, and of due process of law and discriminate invidiously against them, all in violation of the First, Fourth, Fifth, Sixth, and Ninth Amendments to the Constitution and the further grounds that the mode of appointment and confirmation of members of the Federal Election Commission and its purported power to administer, interpret, make rules and enforce said laws is in violation of constitutional separation of powers.

2. The jurisdiction of this Court rests upon 28 U.S.C. Sections 1331, 2201, and 2202, and Section 315(a) of the FECA, 88 Stat. 1285, 2 U.S.C. Section 437h. The amount in controversy, exclusive of interests and costs, exceeds $10,000.



3. Convocation of a three-judge district court is moved pursuant to 28 U.S.C. Sections 2282 and 2284, and certification to the Court of Appeals is requested under Section 315(a) of the FECA, 88 Stat. 1285, 2 U.S.C. Section 437h.

PARTIES

4. Plaintiff JAMES L. BUCKLEY is a United States Senator from the State of New York. He is a citizen of the State of New York and of the United States and is eligible to vote in elections for the office of President of the United States. He is a registered voter in the State of New York in the Republican Party. He is a federal taxpayer. Plaintiff BUCKLEY desires to contribute to the campaigns of particular candidates for federal office amounts greater than $1,000 as a means of expressing his views on public issues. He may seek to be a delegate to the 1976 Republican Party National Convention. Plaintiff BUCKLEY's present intention is to seek re-election in 1976 as United States Senator from the State of New York. Said candidacy will be aided by volunteers whose incidental expenses will exceed $1,500 and thus constitute a contribution or expenditure within the FECA and the FECA Amendments. The expenditure of funds is essential to his success in conveying his ideas and positions on public issues to voters and potential voters. To that end, plaintiff desires to solicit and receive contributions larger than $1,000, employ personal funds or the funds of his immediate family as available and necessary, and to spend whatever amounts are available and necessary to convey his views to voters and potential voters in a meaningful way.

5. Plaintiff EUGENE J. McCARTHY is a former United States Senator from the State of Minnesota. He is a citizen of the State of Minnesota and of the United States

and is eligible to vote in elections for the office of President of the United States. He is a federal taxpayer. Plaintiff McCARTHY on January 12, 1975, announced his candidacy for President of the United States; he will run as an independent, supported by the Committee for a Constitutional Presidency-McCarthy '76. The expenditure of funds is essential to his success in conveying his ideas and positions on public issues to voters and potential voters. To that end, plaintiff desires to solicit and receive contributions larger than $1,000, and to spend whatever is available and necessary to convey his views to voters and potential voters in a meaningful way. Said candidacy will be aided by volunteers whose incidental expenses will exceed $1,500 and thus constitute an expenditure under the FECA and the FECA Amendments.

6. Plaintiff WILLIAM A. STEIGER is a Member of the United States House of Representatives from the Sixth Congressional District of Wisconsin. He is a citizen of the State of Wisconsin and of the United States, and is eligible to vote in elections for the office of President of the United States. He is a registered voter in the State of Wisconsin. He is a federal taxpayer. He may seek to be a delegate to the 1976 Republican Party National Convention. Plaintiff STEIGER is considering a candidacy for federal office in 1976. The expenditure of funds is essential to his success in conveying his ideas and positions on public issues to voters and potential voters. To that end, plaintiff desires to spend whatever amounts are available and necessary to convey his views to voters and potential voters in a meaningful way.

7. Plaintiff STEWART RAWLINGS MOTT is a citizen of the State of New York and of the United States, and is eligible to vote in elections for the office of President



of the United States. He is a registered voter in the State of New York. He is a federal taxpayer. He has contributed in the past and will contribute in the future amounts in excess of $1,000 to individual candidates for federal office and in excess of $25,000 in the aggregate to such candidates. Plaintiff has also made expenditures on behalf of clearly identified candidates but independent of such candidates in excess of $1,000 and intends to do so in the future. Plaintiff MOTT has made and intends to make expenditures against clearly identified candidates in excess of $1,000. Plaintiff has incurred and intends to incur certain incidental expenses on behalf of candidates as a volunteer in excess of $500. Such contributions are for the purpose of furthering plaintiff's ideas and positions on issues of public policy.

8. Plaintiff COMMITTEE FOR A CONSTITUTIONAL PRESIDENCY-McCARTHY '76 is a principal campaign committee within the meaning of the FECA, the FECA Amendments, and Subtitle H and a not-for-profit corporation under the laws of the State of Illinois. Plaintiff is independent of the major parties and of any other political party. It is sponsoring a candidate for the office of President of the United States in 1976 and desires to solicit and receive on behalf of such candidate contributions in excess of $1,000, to contribute to said candidate an amount in excess of $5,000 and to make expenditures on behalf of said candidate in excess of two cents multiplied by the voting age population of the United States. Plaintiff will not hold a national nominating convention in 1976 to select its candidate, as such a convention is defined by the FECA Amendments. If plaintiff's candidate is to wage an effective campaign as an independent, he must make expenditures in excess of $20,000,000. Plaintiff's candidate will not be selected by primaries and will become

eligible for state ballots through petition, and expects to incur expenses in that petition effort. Said activities are for the purpose of furthering plaintiff's ideas and positions on issues of public policy and are essential to its ability to participate meaningfully in the political process.

9. Plaintiff CONSERVATIVE PARTY OF THE STATE OF NEW YORK (hereinafter CONSERVATIVE PARTY) is a political party in the State of New York and a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H. It has nominated in the past and intends to nominate in 1976 candidates for the offices of President of the United States, United States Senator from the State of New York, and members of the United States House of Representatives from all or nearly all of the Congressional Districts of the State of New York. Plaintiff will seek to place its candidate for President only on the ballot in New York. Plaintiff is what is commonly called a third party. It intends to solicit and receive contributions in excess of $1,000 for many such candidates, to contribute to many such candidates amounts in excess of $5,000, and to expend on behalf of said candidate for President of the United States an amount in excess of $5,000, to expend an amount in excess of two cents multiplied by the voting age population of the State of New York in the case of its candidate for United States Senator, and to expend an amount in excess of $10,000 in the case of many candidates for the House of Representatives. In some cases, plaintiff may choose a candidate who it hopes will expend personal funds in excess of $35,000 in the case of candidate for United States Senator and $25,000 in the case of a candidate for the House. Said activities are for the purpose of furthering plaintiff CONSERVATIVE PARTY's ideas and positions on issues of public policy and are essential



to its ability to participate meaningfully in the political process.

(10)a. Plaintiff MISSISSIPPI REPUBLICAN PARTY is a political party in the State of Mississippi, and is part of the National Republican Party. It has nominated in the past and intends to nominate in 1976 candidates for the offices of President of the United States, United States Senator from the State of Mississippi, and members of the United States House of Representatives from all or nearly all of the Congressional Districts of the State of Mississippi. The State Central Committee of plaintiff MISSISSIPPI REPUBLICAN PARTY voted in 1972 not to solicit, receive, or expend money on behalf of its candidates for the above mentioned offices because it opposed in principle the requirements imposed on political committees which engaged in such activities by the FECA. Plaintiff will continue this policy under the FECA Amendments. The plaintiff would prefer to contribute directly to its candidates, and may reconsider its 1972 decision in light of the political situation in 1976 and the resolution of this suit. The plaintiff, its officers, and records have been subject to careful and exacting scrutiny by agents of the supervisory officers under the FECA, even despite its decision not to solicit, receive, and expend money on behalf of its candidates.

(b). Although plaintiff MISSISSIPPI REPUBLICAN PARTY will not itself contribute financially to its candidates, it intends to allow persons supporting its candidates to contribute in excess of $1,000 to such candidates. It further intends that its candidates solicit and receive contributions in excess of $1,000, and that they be allowed to expend on behalf of their candidacies whatever amounts are available and necessary. The plaintiff also intends that

some volunteers in the campaigns of its candidates expend in excess of $500 for the incidental expenses such volunteers may incur.

(c). Representatives of plaintiff attend Republican National Conventions. Said representatives vote on the Republican Party's nominations for the offices of President and Vice President of the United States, and on all other matters that in the normal course of events come before such conventions. Plaintiff's representatives also serve, as the Republican Party rules prescribe, on committees of the National Convention, such as the Credentials Committee, and the Platform Committee. Plaintiff desires that the Republican National Committee, on which plaintiff is represented by its National Committeeman and Committeewoman, and State Chairman, spend whatever amounts are available and necessary to finance the 1976 Republican National Convention. Plaintiff is opposed in principle to accepting any payments from the United States Government to finance the Republican Party National Convention in 1976.

(d). The experience of the plaintiff MISSISSIPPI REPUBLICAN PARTY has been and is that affiliation with the plaintiff is a controversial matter in many parts of the State. Persons who identified with the plaintiff's activities may be subjected to harassment or reprisals. Plaintiff does not, therefore, disclose the names of its members or contributors, and offers assurances that their names will remain confidential.

(e). All of plaintiff MISSISSIPPI REPUBLICAN PARTY's activities are for the purpose of furthering plaintiff's ideas and positions on issues of public policy and are essential to its ability to participate meaningfully in the political process.



11. Plaintiff LIBERTARIAN PARTY is a national political party with affiliated organizations in 38 states, a not-for-profit corporation under the laws of the State of Colorado, and a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H. The Party was formed in 1971 and its candidates for President and Vice President of the United States received one vote in the Electoral College in 1972. Plaintiff has nominated in the past and intends in the future to nominate candidates for the offices of President of the United States, United States Senator, and members of the United States House of Representatives. Plaintiff intends to solicit and receive contributions in amounts in excess of $1,000 and to expend for its national nominating convention and on behalf of its Presidential and Vice Presidential candidates such amounts as are available and necessary. In addition, Plaintiff may nominate for the office of President of the United States a candidate who will expend in excess of $50,000 of personal funds for said candidacy. Activities of the Plaintiff LIBERTARIAN PARTY are intended to disseminate its ideas and philosophy to the American public and the solicitation of contributions in amounts exceeding $1,000 are an integral part of those activities.

Plaintiff further regards the acceptance of any subsidy from the United States Government for itself or its candidates to be contrary to its basic philosophy.

12(a). Plaintiff NEW YORK CIVIL LIBERTIES UNION, INC. (hereinafter NYCLU) is a not-for-profit corporation, organized under the laws of the State of New York. It is a non-partisan organization, dedicated to defending the rights guaranteed to persons under the Constitution and having as a principal function the dissemination of information concerning such rights within the State of New

York. Plaintiff NYCLU, the New York State affiliate of the American Civil Liberties Union, is and has been since its inception barred by the American Civil Liberties Union constitution, by-laws, and policies from endorsing or opposing any candidate for public office.

(b). Plaintiff NYCLU has in excess of 40,000 members in New York State. Such members reside in all parts of the State. Membership dues for the NYCLU are $15 per year. Many members contribute more than $15 per year. Some contribute more than $100 per year, and the prime source of funds for NYCLU is contributions by members. The experience of the plaintiff NYCLU has been and is that membership is a controversial matter in many parts of the State. NYCLU does not disclose the names of its members and contributors. NYCLU regularly receives a substantial amount of "hate mail," most of which attacks NYCLU, its leadership and members, for allegedly subverting law and order or supporting "radical" groups. Numerous persons who have been identified with NYCLU activities have from time to time been threatened with physical violence or subjected to harassment or reprisals. As a consequence, many members request assurances that their names will remain confidential, and many contributors expressly request that they not be listed on the membership rolls.

(c). As part of its program of public education on controversial civil liberties issues, such as school busing, prisoners rights, and police misconduct, plaintiff NYCLU often sponsors newspaper advertisements or otherwise expends funds in excess of $1,000 in order to communicate its views to the public, and intends to do so in the future. The sole purpose of such activity is to set forth and publicize plaintiff's views and positions on important public



issues involving civil liberties. Although plaintiff NYCLU does not endorse or oppose the election of candidates for public office, its advertisements and statements of views on public issues frequently and necessarily refer to, praise or criticize the conduct or actions of clearly identified public officials who may also happen to be candidates for federal office.

(d). In addition, the plaintiff NYCLU regularly publicizes, in its membership newsletter and through other publications, the civil liberties voting records, positions and actions of elected public officials, who are also frequently candidates for federal office. The NYCLU also solicits and then publicizes the views of candidates for office on civil liberties issues. NYCLU's purpose in communicating such information is to inform its members and the public generally about the views and actions of public officials and candidates with respect to civil liberties issues. The expenses of disseminating such information are normally paid for out of the plaintiff's general funds supplied by membership dues and contributions. Disclosure by the plaintiff of the names of its members and contributors would cause and tend to cause persons who are presently members to resign and would deter other persons from joining, paying dues and making contributions to the NYCLU.

13(a). Plaintiff AMERICAN CONSERVATIVE UNION (hereinafter ACU) is a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954. Plaintiff is independent of the two major political parties or of any other political party. Plaintiff ACU has made in the past, and intends to continue in the future to make contributions to political candidates whose ideas and positions on issues of

public policy are similar to its own. These contributions will exceed $5,000 in the case of individual candidates. Said contributions are for the purpose of furthering ACU's positions on public issues.

(b). In addition, the Plaintiff ACU regularly publicizes, both in communications to its members and to the general public, the voting records, positions, and actions of elected public officials, who are also frequently candidates for federal office. ACU, among other things, annually publishes a percentage rating of the voting record of incumbent members of both Houses of Congress, showing whether such incumbents supported or opposed issues of interest to ACU and its members.

14. Plaintiff CONSERVATIVE VICTORY FUND (hereinafter CVF) is a political committee within the meaning of the FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954. Plaintiff is independent of the two major political parties or of any other political party. Plaintiff CVF has made in the past, and intends to continue to make in the future, contributions to political candidates whose ideas and positions on issues of public policy are similar to its own. These contributions have exceeded and will exceed $5,000 in the case of individual candidates. Said contributions are for the purpose of furthering CVF's positions on public issues.

15. Plaintiff HUMAN EVENTS, INC., is a corporation organized under the laws of the State of Delaware. It publishes a weekly newspaper devoted primarily to the reporting of events of political importance and interest, to the discussion of public issues, and to the discussion of public officials, political leaders and candidates. HUMAN EVENTS also distributes books, tapes, pamphlets, reprints of articles, and employs other forms of communication to further its



corporate and editorial purposes. It endorses explicitly or by implication or refrains from endorsing candidates for federal offices where it deems it necessary and appropriate. It regularly takes editorial positions on matters of public controversy. It has in the past and intends in the future to recommend to those of its readers who share its views that such readers communicate their views to public officials, political candidates, and other political leaders. Plaintiff is wholly owned by its three top executive employees and is not controlled directly or indirectly by any political party or political committee.

16. Defendant FRANCIS R. VALEO is the duly appointed Secretary of the United States Senate. This defendant is a designated "supervisory officer" within the meaning of the FECA and the FECA Amendments and will enforce Titles I and III of the FECA until the appointments and qualification of all the members and general counsel of the Federal Election Commission, Section 208, FECA Amendments, 88 Stat. 1286. He is sued in his official capacity.

17. Defendant W. PAT JENNINGS is the duly appointed and presently acting Clerk of the United States House of Representatives. This defendant is designated a "supervisory officer" within the meaning of the FECA and FECA Amendments and will continue to enforce Titles I and III of the FECA until the appointments and qualification of all the members and general counsel of the Federal Election Commission, Section 208, FECA Amendments, 88 Stat. 1286. He is sued in his official capacity.

18. Defendant ELMER B. STAATS is the duly appointed Comptroller-General of the United States. This defendant is designated a "supervisory officer" within the meaning of the FECA and FECA Amendments and will

continue to enforce Titles I and III of the FECA until the appointments and qualification of all the members and general counsel of the Federal Election Commission, Section 208, FECA Amendments, 88 Stat. 1286. He is sued in his official capacity.

19. Defendants VALEO, JENNINGS, and STAATS, in their respective capacities as "supervisory officers" under the FECA, are charged with enforcement of the FECA and the Regulations promulgated thereunder. Defendants VALEO and JENNINGS are also *ex officio* Members of the Federal Election Commission.

20. Defendant EDWARD H. LEVI is the Attorney General of the United States. As such, he is charged with the enforcement of criminal sanctions against violations of Title 18 of the United States Code. He is also empowered to receive from the supervisory officers and/or the FEDERAL ELECTION COMMISSION notifications of apparent violations of the FECA and the FECA Amendments, and at the request of the supervisory officers and/or FEDERAL ELECTION COMMISSION, to institute civil actions for relief or any other appropriate order. In any case in which the FEDERAL ELECTION COMMISSION refers an apparent violation to the Defendant, he must respond by report to the Commission with respect to any action taken by him regarding the apparent violation.

21. Defendant FEDERAL ELECTION COMMISSION is established by Section 208(a) of the FECA Amendments, 88 Stat. 1280, as amended by the FECA, 2 U.S.C. Section 437c. The six members of the FEDERAL ELECTION COMMISSION have not been confirmed as of the date of the filing of this complaint. When said members are confirmed and in office, they will be named in their official capacities as defendants in this action.



## THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 AND THE AMENDMENTS OF 1974

22. The FECA Amendments substantially revise the FECA, and incorporate within their statutory framework Subtitle H of the Internal Revenue Code of 1954.

### Limits on Contributions to Candidates

23. Section 101(a) of the FECA Amendments, 88 Stat. 1263, amends 18 U.S.C. Section 608 to provide *inter alia* that

(a) no person (as defined by 18 U.S.C. Section 591 (g) to mean an "individual, partnership, committee, association, corporation or any other organization or group of persons") shall contribute to any candidate with respect to any election for any federal office more than $1,000;

(b) no individual shall make contributions aggregating more than $25,000 in any calendar year (contributions in a calendar year being defined to mean any contribution made with respect to a given election whether or not made during the actual year of such election); and

(c) no political committee as defined by 18 U.S.C. Section 608(b) as amended by the FECA Amendments to mean an organization registered as such under Section 303 of the FECA for a period of not less than 6 months which has received contributions from more than 50 persons and (except for State party organizations) has contributed to 5 or more candidates for federal office (other than a principal campaign committee) shall make contributions to any candidate with respect to any election for federal office in excess of $5,000.

24. Section 101(b) of the FECA Amendments, 88 Stat. 1266, amends 18 U.S.C. Section 608(a)(1) to provide that no candidate shall make expenditures from his personal funds or those of his immediate family in connection with his campaigns for nomination for election, or for election to federal office in excess of the following aggregate amounts:

(a) $50,000, in the case of a candidate for the office of President or Vice President of the United States;

(b) $35,000, in the case of a candidate for the office of Senator or for the office of Representative from a State which is entitled to only one Representative; and

(c) $25,000, in the case of a candidate for the office of Representative in any other State.

25. Section 120(c) of the FECA Amendments, 88 Stat. 1269, amends 18 U.S.C. Section 591(e) to provide that certain incidental expenses incurred by volunteers in excess of $500 are a "contribution" within the meaning of Section 101(a).

26. The limitations specified in paragraphs 23, 24 and 25 of this complaint are not to be adjusted according to changes in the Consumer Price Index.

**Limits on Candidate Expenditures**

27. Section 101(a) of the FECA Amendments, 88 Stat. 1264, amends 18 U.S.C. Section 608 to provide that:

(a) no candidate shall make expenditures in excess of $10,000,000 in the case of a candidate for nomination to the office of President of the United States, except that the aggregate of expenditures in any one State shall not



exceed twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of Senator, and except that the Federal Election Commission is empowered to prescribe rules under which expenditures in two or more States shall be allocated for purposes of the expenditure limitation, based on the voting age population in each State which can reasonably be expected to be influenced by such expenditure;

(b) no candidate shall make expenditures in excess of $20,000,000 in the case of a candidate for election to the office of President of the United States;

(c) no candidate shall make expenditures in excess of the greater of 8 cents multiplied by the voting age population of the State or $100,000, whichever is greater, in the case of a campaign for nomination for election by a canddiate for the office of United States Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative;

(d) no candidate shall make expenditures in excess of the greater of 12 cents multiplied by the voting age population of the State or $150,000, whichever is greater, in the case of any campaign for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative;

(e) no candidate shall make expenditures in excess of $70,000 in the case of any campaign for nomination for election, or for election by a candidate for the office of Representative in any State entitled to more than one Representative;

(f) Section 102(d) of the FECA Amendments, 88 Stat. 1270-1271, amends 18 U.S.C. Section 591(f), relating to expenditures to exclude, *inter alia*, a candidate's fund-

raising costs up to 20 percent of the applicable spending limit; and

(g) the limitations enumerated in paragraph 27 subparagraphs (a) through (e) of this complaint shall be adjusted with reference to the Consumer Price Index, by a formula provided in Section 101(a) of the FECA Amendments, 88 Stat. 1265.

28. Section 101(a) of the FECA Amendments, 88 Stat. 1264, amends 18 U.S.C. Section 608 to define an expenditure "made on behalf of a candidate" as one made by

(a) an authorized committee or any other agent of the candidate for the purposes of making any expenditure; or

(b) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

**Independent Expenditure Limitations**

29. Section 101(a) of the FECA Amendments, 88 Stat. 1265, amends 18 U.S.C. Section 608, to prohibit expenditures by any "person" as defined by 18 U.S.C. Section 591(g) to mean an "individual, partnership, committee, association, corporation or any other organization or group of persons," independent of and not by or on behalf of a candidate but "relative to a clearly identified candidate" in excess of $1,000. "Clearly identified" is defined to mean (i) the candidate's name appears, (ii) a photograph or drawing of the candidate appears, or (iii) the identity of the candidate is apparent by unambiguous reference.



**Expenses of Volunteers**

30. Section 102(d) of the FECA Amendments, 88 Stat. 1270, amends 18 U.S.C. Section 591 to provide that "expenditure" includes certain incidental expenses incurred by volunteers in excess of $500.

**Penalties**

31. Section 101(a) of the FECA Amendments, 88 Stat. 1266, amends Section 608 of the FECA to provide that any person who violates any provision of that Section shall be fined not more than $25,000 or imprisoned not more than one year, or both.

**Presidential Nominating Conventions**

32. Section 406(a) of the FECA Amendments, 88 Stat. 1295, amends Section 9008 of the Internal Revenue Code of 1954 to limit the expenditures of the national committee of a party with respect to a presidential nominating convention to $2,000,000 (adjusted to the Consumer Price Index).

33. Section 406(a) of the FECA Amendments, 88 Stat. 1296, amends Section 9008 of the Internal Revenue Code of 1954 to provide that the Federal Election Commission may authorize the national committee of a party to make expenditures which exceed the limitation enumerated in paragraph 32 of this complaint. Such authorization is to be based on the Commission's determination that "due to extraordinary and unforseen circumstances, such expenditures are necessary to assure the effective operation of the presidential nominating convention by such committee."

34. Section 406(b)(3) of the FECA Amendments, 88 Stat. 1296, amends Section 9012 of the Internal Revenue

Code of 1954, to provide that any officer or member of a national committee who consents to a violation of the requirements specified in paragraph 32 of this complaint shall be fined not more than $5,000 or imprisoned not more than one year, or both.

**Amounts Contributed in Excess of Expenditures**

35. Section 210 of the FECA Amendments, 88 Stat. 1289, provides that amounts received by a candidate as contributions which exceed his or her expenditures may be used to defray any ordinary and necessary expenses incurred in connection with his or her duties as holder of a federal office.

**Expenditures of Political Party National Committees**

36. Section 101(a) of the FECA Amendments, 88 Stat. 1265, amends 18 U.S.C. Section 608 to provide that the national committee of a political party and state committees of a political party may make expenditures in connection with campaigns for federal office subject to certain spending limits. In the case of a national committee, it may spend no more than an amount equal to two cents multiplied by the voting age population of the United States in connection with a general election for President. A national or state committee or a party may spend: (1) up to two cents multiplied by the voting age population of the State or $20,000, whichever is greater, in connection with an election to the office of Senator or of Representative from a State which is entitled to only one Representative; (2) up to $10,000 in connection with an election to the office of Representative in any other State.



**Subsidy for Presidential Elections**

37. Sections 403-409 of the FECA Amendments, 88 Stat. 1291, amend Subtitle H of the Internal Revenue Code of 1954 to provide public financing for elections for the office of President of the United States. Under Section 9002 a candidate with respect to any presidential election is defined as an individual who has been nominated for election to that office by a major party or has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) in ten or more States. A major party is defined as one whose candidate in the preceding presidential election received, as the candidate for such party, twenty-five percent or more of the total number of popular votes received by all candidates for such office. A minor party is defined as one whose candidate in the preceding presidential election received, as the candidate of such party, five percent or more but less than twenty-five percent of the total number of popular votes received by all candidates for such office. A new party is defined as one which is neither a major party nor a minor party.

38. Section 9006 of the Internal Revenue Code of 1954, as amended by the FECA Amendments, establishes a "Presidential Election Campaign Fund" composed of amounts designated to the fund by individuals under Section 6096. Section 6096 permits individual and joint taxpayers to designate one or two dollars, as the case may be, of the taxes they owe to the Presidential Election Campaign Fund. If, at the time of a certification from the Federal Election Commission for payment to eligible candidates, such amounts are not or may not be sufficient to satisfy the full entitlements of the eligible candidates of all political parties, a pro rata distribution is called for, in accord

with a priority for different kinds of expenses as established by the FECA.

39. Under Section 9004 of the Internal Revenue Code of 1954, as amended by Section 404(a) of the FECA Amendments, 88 Stat. 1291, candidates for major parties are entitled to equal payments, up to the statutory expenditure limit of $20,000,000, as adjusted by reference to the Consumer Price Index. Candidates of minor parties are entitled to payments equal to an amount which bears the same ratio to the amount allowed major party candidates as the number of popular votes received by the minor party's presidential candidate in the preceding presidential election bears to the average number of popular votes received by major party candidates for President in the preceding presidential election. A candidate who in the previous presidential election received between five and twenty-five percent of the popular vote is to receive an amount computed in the same manner as that of a minor party (less whatever his or her party receives). After the election, a candidate of a minor party who receives more than five percent of the popular vote is entitled to an amount similarly computed if that exceeds the amount computed on the basis of the previous election. A candidate of a new party who receives more than five percent of the popular vote is entitled after the election to an amount computed on the basis of the same ratio.

40. Under Section 9008 of the Internal Revenue Code of 1954, as amended by Section 406(a) of the FECA Amendments, 88 Stat. 1294, major parties are entitled to payments up to $2,000,000 to defray expenses of nominating conventions (to be paid before any of the payments specified in paragraph 39 of this complaint). Minor parties are entitled to an amount to support their nominating



conventions computed on the ratio described in paragraph 39 of this complaint based on the previous presidential election. The Federal Election Commission may authorize national committees of major and minor parties to make expenditures exceeding the limits described in paragraph 32 of this complaint upon a determination by the Commission that "due to extraordinary and unforeseen circumstances, such expenditures are necessary to assure the effective operation" of the convention.

41. Under Sections 9033 and 9034, as amended by Section 408(c) of the FECA Amendments, 88 Stat. 1297, a candidate for nomination for election to the office of President of the United States may receive from the Presidential Election Campaign Fund funds to pay expenses incurred in connection with his or her campaign for nomination if he or she has received contributions in excess of $5,000 from residents of at least twenty States (the excess over $250 from any one individual not to be counted), the funds provided to be in an amount matching such contributions (the excess over $250 from any one individual not to be matched). Such payments are to be made only if sufficient funds are available for the payments specified in paragraphs 39 and 40 of this complaint.

**Federal Election Commission**

42. Section 208(a) of the FECA Amendments, 88 Stat. 1280, amends the FECA, 2 U.S.C. Section 437c, by providing for the establishment of a Federal Election Commission. Said Commission is to be composed of six members, two appointed by the President pro tempore of the Senate on the recommendations of the majority and minority leaders of the Senate, two by the Speaker of the House of

Representatives on the recommendations of the majority and minority leaders of the House, and two by the President. All must be confirmed by a majority of both Houses.

43. The Commission has broad powers, Section 208(a) of the FECA Amendments, 88 Stat. 1282, 2 U.S.C. Section 437d. It may, *inter alia:* (a) investigate with the aid of compulsory process; (b) exercise primary jurisdiction with respect to civil enforcement of the FECA, as amended, by bringing actions (including proceedings for injunction) in federal district courts; (c) refer violations to the Attorney General; (d) formulate general policy with respect to the administration of the FECA, the FECA Amendments, and certain provisions of Title 18 of the United States Code; (e) render advisory opinions; and (f) make rules necessary to carrying out the FECA and the FECA Amendments.

44. Section 209(b)(1) of the FECA Amendments, 88 Stat. 1287, amends Section 316(a) of the FECA to empower the Commission to make rules and regulations under the provisions of the FECA and FECA Amendments relating to reporting and disclosure. Any proposed rule or regulation dealing with required reports or statements by a candidate for the office of Senator and by political committees supporting such candidate shall be transmitted to the Senate. If the Senate does not disapprove such a proposed rule or regulation within 30 legislative days, the Commission may prescribe it. Any proposed rule or regulation dealing with required reports or statements by a candidate for the office of Representative and by political committees supporting such candidate shall be transmitted to the House. If the House does not disapprove such proposed rule or regulation within 30 legislative days, the Commission may prescribe it. If a proposed



rule relates to required reports or statements by a candidate for the office of President of the United States, and by political committees supporting such candidate, it shall be transmitted to both the House and the Senate. Both the Senate and the House may disapprove any such proposed rule or regulation within 30 legislative days.

45. Section 302 of the FECA Amendments, 88 Stat. 1290, amends the FECA, 2 U.S.C. Section 456, to provide that if the Commission finds that a candidate for a federal office failed to file a report required by the FECA or the FECA Amendments, such person shall be disqualified from becoming a candidate in any future election for federal office until one year after the expiration of the term for which such person was a candidate.

**Miscellaneous Definitions**

46. The FECA and FECA Amendments define in Section 301(d) a political committee as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000."

47. Section 301(e) of the FECA and Section 591(e) of Title 18 U.S.C., as amended, define a contribution as a gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing the nomination for election of any person to federal office or for influencing the results of a primary to select delegates to a national nominating convention or influencing the result of an election held for the expression of a preference for the nomination of persons for election to the office of the President of the United States. News stories, commentaries and editorials are not excepted from these definitions.

48. Section 301(f) of the FECA and Section 591(f) of Title 18 U.S.C. define expenditures to mean a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination for election of any person to federal office or for influencing the results of a primary to select delegates to a national nominating convention or influencing the results of an election held for the expression of a preference for the nomination of persons for election to the office of the President of the United States. News stories, commentaries and editorials are excepted from these definitions.

**Reporting and Disclosure**

49. Under Section 302(b) of the FECA, as amended by Section 202(a) of the FECA Amendments, 88 Stat. 1275, committees must keep detailed records identifying any person who contributes $10 or more. Under Section 304(a) of the FECA, as amended by Section 204(a) of the FECA Amendments, 88 Stat. 1277, political committees receiving contributions or making expenditures on behalf of a candidate must file reports with said candidate's principal campaign committee which comply in all respects with the reports required to be filed with the Federal Election Commission by the principal campaign committee. A principal campaign committee must, under Section 304(b) of the FECA, report the full name, mailing address, and occupation of each person who has made one or more contributions to or for said committee in an aggregate amount in excess of $100, together with the amount and date of said contribution.

50. Section 204(c) of the FECA Amendments, 88 Stat. 1277, amends Section 304 of the FECA to provide that a



member of Congress need not report as contributions received or expenditures made the value of services furnished by the Senate or House recording studios, or by an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives, and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Congressional Committees. The section does not apply to recording services furnished during the calendar year before the year in which the member's term expires.

51. Section 204(c) of the FECA Amendments, 88 Stat. 1278, provides that every person who makes contributions or expenditures other than by contributions to a political committee or candidate in an aggregate amount in excess of $100 shall file with the Commission a report containing the information described in paragraph 49 of this complaint.

52. Section 208(a) of the FECA Amendments, 88 Stat. 1279, amends the FECA as follows:

> "Sec. 308. Any person (other than an individual who expends any funds or commits any act directed to the public for the purpose of influencing the outcome of an election, or who publishes or broadcasts to the public any material referring to a candidate (by name, description, or other reference) advocating the election or defeat of such candidate, setting forth the candidate's position on any public issue, his voting record, or other official acts (in the case of a candidate who holds or has held Federal office), or otherwise designed to influence individuals to cast their votes for or against such candidate

or to withhold their votes from such candidate shall file reports with the Commission as if such person were a political committee. The reports filed by such person shall set forth the source of the funds used in carrying out any activity described in the preceding sentence in the same detail as if the funds were contributions within the meaning of section 301(e), and payments of such funds in the same detail as if they were expenditures within the meaning of section 301(f)."

53. Section 208 of the FECA Amendments, 88 Stat. 1284, amends the FECA to provide that the Federal Election Commission may institute civil actions for relief, including injunctions, if there is reason to believe that a person has engaged, or may engage, in acts or practices which violate the Act. The Commission may also request the Attorney General to bring civil actions for relief, including injunctions, against violations of the Act.

**Penalties**

54. Title 2 U.S.C. Section 441 provides that any person who violates the registration, reporting and disclosure provisions specified in paragraphs 49, 50, 51, or 52 of this complaint shall be fined not more than $1,000 or imprisoned not more than one year, or both.

## CAUSES OF ACTION

55. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they restrict and inhibit political activity by limiting the solicitation, receipt or making of contributions on behalf of political candidates, in violation of the rights of



freedom of speech and association guaranteed by the First Amendment to the Constitution.

56. The FECA and the FECA Amendments violate the rights of one or more of the plaintiffs in that they restrict and inhibit political activity by preventing candidates or their immediate family from expending personal funds where available and necessary, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

57. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they restrict and inhibit political activity by limiting the incidental expenses which volunteers working on behalf of political candidates may incur, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

58. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they limit expenditures by a candidate for federal office, and thereby restrict and inhibit the candidate's ability to communicate his ideas and positions, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

59. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they are designed to have, and have, the effect of favoring most incumbent officeholders and thereby disadvantaging most challengers, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution. Incumbents have, at the government's expense, permanent offices, the

frank, expense allowances, an established staff, access to Congressional television recording services, and a variety of office supplies and expenses, none of which constitute expenditures within the FECA and the FECA Amendments when used by them for all but blatantly political purposes. Challengers can employ such valuable resources only by making expenditures which the Act limits to an amount far below the value of what is available to incumbents by virtue of their office alone. This disparity is in addition to the political advantages which naturally inhere in incumbency, such as ability to make news and wider name recognition.

60. The FECA Amendments deprive one or more plaintiffs of their constitutional rights in that they allow incumbent officeholders and successful candidates to employ surplus campaign funds to defray the expenses of their offices, thus discriminating invidiously against candidates challenging incumbents and against unsuccessful candidates for federal office, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

61. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against third parties, minor parties, and independent candidacies which rely heavily on large contributions, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

62. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against third parties, minor parties,



and independent candidacies which have not previously demonstrated their ability to capture a large percentage of the popular vote or which run candidates on a "balance of power" or "spoiler" strategy hoping to influence the policies of the major parties, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

63. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they limit the expenditures of national committees of a political party in the case of campaigns for federal office in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

64. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against political parties lacking a national committee, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

65. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate against political parties sponsoring a candidate for President in only one State, in violation of their rights of freedom of speech and association guaranteed by the First Amendment to the Constitution and the Due Process Clause of the Fifth Amendment to the Constitution.

66. The FECA Amendments deprive one or more of the plaintiffs of their rights in that the method of appointment of the Federal Election Commission violates the constitutional separation of powers and discriminates invidiously against them in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

67. The FECA Amendments deprive one or more of the plaintiffs of their right to a hearing before an impartial tribunal by entrusting administration and enforcement of the FECA, as amended, to the Federal Election Commission, in violation of the constitutional separation of powers, Article III, and the Due Process Clause of the Fifth Amendment to the Constitution.

68. The FECA Amendments deprive one or more of the plaintiffs of their rights in that the Federal Election Commission is empowered to make rules under the FECA in violation of the constitutional separation of powers and the Due Process Clause of the Fifth Amendment to the Constitution.

69. The FECA Amendments deprive one or more of the plaintiffs of their rights in that the Federal Election Commission has power to disqualify a person from becoming a candidate for election to federal office in violation of the First, Fifth, and Sixth Amendments to the Constitution.

70. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they provide, through auditing procedures, for the Federal Election Commission to inspect lists and records required to be kept by political committees of individuals who contribute more than $10, in violation of their rights of freedom of speech and association and privacy guaranteed by the First, Fourth, and Ninth Amendments to the



Constitution and of their right to due process of the Fifth Amendment to the Constitution.

71. The FECA Amendments and the FECA violate the rights of one or more of the plaintiffs in that they require political committees to register and disclose the names of those of their contributors who contribute in excess of $100, in violation of their rights of freedom of speech, association and privacy guaranteed by the First Fourth, and Ninth Amendments to the Constitution and of their right to due process of the Fifth Amendment to the Constitution.

72. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they discriminate invidiously against them by not requiring the same disclosure from incumbent officeholders of all resources available to such incumbents, such as the value of services furnished by the Senate or House recording studios or the services of certain individuals on their staffs, in violation of the right to due process of the Fifth Amendment to the Constitution.

73. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they provide that every person contributing or expending more than $100 other than by contribution to a political committee or candidate (including volunteers with incidental expenses in excess of $600) must make disclosure to the Federal Election Commission, in violation of the rights of freedom of speech, association and privacy of the First, Fourth, and Ninth Amendments to the Constitution and of their right to due process of the Fifth Amendment to the Constitution.

74. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they require any person who expends funds or commits any act for the purpose of influencing the outcome of an election or who publishes or broadcasts to the public any material advocating the election or defeat of a candidate, setting forth a candidate's position on any public issue, his voting record or any official acts to file reports with the Commission as if such person were a political committee, in violation of the rights of freedom of speech, association and privacy of the First, Fourth, and Ninth Amendments to the Constitution.

75. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they provide criminal penalties for violation of the disclosure provisions of the statutes, in violation of the rights of freedom of speech, association and privacy of the First, Fourth, and Ninth Amendments to the Constitution.

76. The FECA and the FECA Amenuments violate the constitutional rights of one or more of the plaintiffs in that they restrain and inhibit individual political activity by limiting to $1,000 the independent (not on behalf of a candidate) expenditures of any person relative to an identified candidate, in violation of the rights of freedom of speech and association of the First Amendment to the Constitution.

77. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they exclude from the definition of "political committee" committees registered for less than the period of time prescribed in the statute, thus invidiously discriminating against such committees by prohibiting them from



participating in the political process for a six-month period, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

78. The FECA and the FECA Amendments provide that the government may bring criminal prosecutions against anyone who violates or is about to violate Section 608 of the FECA and Section 9008 of the Internal Revenue Code of 1954. The risk of criminal prosecution deters and restrains one or more of the plaintiffs and in certain instances constitutes a prior restraint of their exercise of their rights of freedom of speech and of association in violation of the First Amendment to the Constitution and deprives one or more of the plaintiffs of due process of law in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

79. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of their constitutional rights in that federal tax money is thereby used to support political movements and organizations, in violation of the restrictions imposed on the federal taxing and spending power by the First Amendment to the Constitution.

80. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of their constitutional rights in that federal tax money is thereby used to support only certain political parties in violation of the restrictions imposed on the federal taxing and spending power by the First Amendment to the Constitution.

81. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 deprive one or more of the plaintiffs of their constitutional rights in that

federal taxpayers are permitted to designate neither their preference for parties nor for candidates, in violation of the rights of freedom of speech and association guaranteed by the First Amendment to the Constitution.

82. The FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 violate the constitutional rights of one or more of the plaintiffs in that they establish officially supported political parties and discriminate against third parties, minor parties and independent candidates, against parties sponsoring a candidate for President in less than ten States, against candidates with substantial support in less than twenty States, against parties who have neither nominating conventions nor primaries, and against independent candidates not nominated by conventions or primaries. These provisions violate the rights of freedom of speech and association of the First Amendment to the Constitution and the right to due process of law of the Fifth Amendment to the Constitution.

83. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they empower the Federal Election Commission and the Attorney General to bring civil actions, including proceedings for injunctions against any person who has engaged or who may engage in acts or practices which violate the Act. The risk of being subject to civil injunction proceedings deters and restrains one or more of the plaintiffs and in certain instances constitutes a prior restraint of the exercise of their rights of freedom of speech and association of the First and Fifth Amendments to the Constitution.

84. The FECA and the FECA Amendments violate the constitutional rights of one or more of the plaintiffs in that they limit the freedom of the press by exempting



news stories, commentaries, and editorials from the statutory definitions of "expenditure" but not from the statutory definitions of "contribution," thus subjecting those press functions to regulation, in violation of the rights of a free press guaranteed by the First Amendment to the Constitution.

85. Titles I, II, III, and IV of the FECA Amendments deprive one or more of the plaintiffs of the rights of freedom of speech and association and of due process of law under the First and Fifth Amendments to the Constitution because they are excessively vague and overbroad.

86. Titles I, II, III, and IV deprive one or more of the plaintiffs of their retained rights under the Ninth Amendment to the Constitution.

87. The FECA, the FECA Amendments, and Subtitle H deprive one or more of the plaintiffs of their rights in that these statutes will diminish the financial and other political support received by them from adherents and supporters, all in violation of the constitutional provision enumerated in paragraphs 55-86 of this complaint.

88. Unless application of the FECA, the FECA Amendments, and Subtitle H of the Internal Revenue Code of 1954 against the plaintiffs is enjoined by this Court, plaintiffs will suffer irreparable injury and will be unable to exercise their constitutional rights to participate effectively in the political process, to communicate their views on issues of public policy, to support candidates for federal office, and to compete without discrimination in the electoral process.

**Prayer for Relief**

WHEREFORE, plaintiffs pray that the Court make application for the convening of a three-judge district court and that said three-judge court hear this action, and upon such hearing to:

1. Order, adjudge, decree and declare that the FECA, the FECA Amendments, and Subtitle H are repugnant to the Constitution of the United States, and that said statutes violate plaintiffs' rights under the Constitution of the United States; and further

2. Permanently enjoin and restrain defendants, their agents and assistants from the use, operation, enforcement, execution and application of the FECA, the FECA Amendments, and Subtitle H in any and all respects in which the same may be found to be repugnant to the Constitution of the United States; and further

3. Grant such order and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Plaintiffs further pray, pursuant to Section 315(a) of the FECA, 88 Stat. 1285, 2 U.S.C. Section 437h, that this Court immediately certify, to the United States Court of Appeals for the District of Columbia Circuit all questions of constitutionality raised herein.



Dated: February 7, 1975

/s/ Brice M. Clagett
Brice McAdoo Clagett

/s/ John R. Bolton
John R. Bolton
888 Sixteenth Street, N.W.
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Attorneys for the Plaintiffs

**Order of Court of Appeals**
**(February 19, 1975)**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Caption Omitted in Printing]

Before: Bazelon, Chief Judge; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, Circuit Judges

ORDER

This matter is before the Court upon the certification of constitutional questions from the District Court, Corcoran, J., on January 24, 1975. In lieu of a record, the entire file has been transmitted by the Clerk of the District Court. Contained within that file was defendants' Motion to Dismiss, upon which no action was taken below. Plaintiffs' opposition thereto was filed in this Court on January 29, 1975.

Upon consideration of the foregoing, it is hereby

ORDERED by the Court that this matter is preliminarily deemed to have been properly certified to this Court by the District Court below, pursuant to Section 315(a) of the Federal Election Campaign Act, *as amended*. This Court shall proceed to consider the instant matter *en banc*, pursuant to Section 315(a), 28 U.S.C. §46(c) and Rule 35 (a), Fed. R. App. P. It is

FURTHER ORDERED by the Court that the Clerk inquire of each of the parties by letter as to their expectations regarding the need for the taking of evidence, or the hearing of witnesses, so that appropriate procedures may be considered for adoption by the Court.



FURTHER ORDERED by the Court that the parties file additional memoranda and/or briefs on the jurisdictional questions (including both the motion to remand and the motion to dismiss) according to the following schedule:

| | |
|---|---|
| Defendants | shall file within 20 days of the entry of this order |
| Plaintiffs | shall file their answering papers within 15 days thereafter |
| Defendants | a reply, if any, shall be filed within 5 days |

The Clerk shall thereafter schedule oral argument on all jurisdictional contentions.

*Per Curiam*

**Letter of Clerk, Court of Appeals**
**(February 20, 1975)**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HUGH E. KLINE
Clerk

Washington, D.C. 20001
February 20, 1975

IN RE: No. 75-1061 – James L. Buckley, United States Senator from the State of New York, et al v. Honorable Francis R. Valeo, Secretary, United States Senate, et al

Brice M. Clagett, Esquire
888 16th Street, N.W.
Washington, D.C. 20006

Morton Hollander, Esquire
U.S. Department of Justice
Washington, D.C. 20530

Lloyd N. Cutler, Esquire
1666 K Street, N.W.
Washington, D.C. 20006

Gentlemen:

By order of the Court entered on February 19, 1975, the Clerk is instructed to "inquire of each of the parties by letter as to their expectations regarding the need for the taking of evidence, or the hearing of witnesses, so that appropriate procedures may be considered for adoption by the Court."

This preliminary inquiry made in the interest of expedition, of course does not indicate any stance of the Court vis-a-vis the currently pending motions.

Depending upon the foreseen need for adducing evidence, such procedures may include appointment of a special master, whose cost will be apportioned among the parties as justice may require.



The parties are invited to recommend fact-finding procedures which meet their own requirements for the offering into evidence of documents, depositions, live witnesses or other contemplated proffers. The Court is mindful that proponents of the motion to remand believe that, "The trial court is obviously better structured than this Court to perform that [development of a factual record] task expeditiously." Defendants are therefore asked to respond to this inquiry as if in the alternative, without prejudice to their pending motions.

Responses in compliance with this letter should be submitted on or before March 3, 1975.

Very truly yours,
HUGH E. KLINE, Clerk

/s/ Robert A. Bonner
By: Robert A. Bonner
Chief Deputy Clerk

**Order of Court of Appeals**
**(March 14, 1975)**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Caption Omitted in Printing]

Before: BAZELON, Chief Judge, and WRIGHT, McGOWAN, TAMM, LEVENTHAL, ROBINSON, MacKINNON and WILKEY, Circuit Judges

ORDER

This matter is before the court for consideration of fact-finding procedures to be adopted pursuant to the order of this court dated February 19, 1975, and further pursuant to the parties' responses to the inquiry of our Clerk dated February 20, 1975 on the instant subject. It appears to the court from the responses to the Clerk's letter filed that all parties approve of commencement of fact-finding prior to disposition of the pending motions to remand and to dismiss. Therefore, it is

ORDERED by the court that the parties file proposed findings of fact, and in conjunction with each such separate proposed finding shall file a documented offer of proof in support thereof, such documented offer to consist of actual documents, affidavits, depositions, or other evidence in tangible form, these filings to be made within twenty (20) days of this order. Within fifteen (15) days of the above filing date, the parties will file responses indicating which of the first round of submitted proposed findings of fact they admit, which they admit in part, and which they deny. As to those proposed findings of fact



in whole or in part not admitted, each party will that day file documented offers of proof establishing what it submits the fact to be. It is

FURTHER ORDERED by the court that oral argument on the pending motions to remand and to dismiss will be heard on April 2, 1975. Counsel will be notified as to the time for oral argument at a later date.

Per Curiam

For the Court
/s/ Hugh E. Kline
Hugh E. Kline
Clerk

## Order and Memorandum of Court of Appeals
## (April 14, 1975)

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

# UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**James L. BUCKLEY et al., Plaintiffs,**

**v.**

**Hon. Francis R. VALEO et al., Defendants,**

**Center For Public Financing of Elections, Common Cause, The League of Women Voters of the United States, Chellis O'Neal Gregory, Norman P. Jacknis, Susan B. King, Daniel R. Noyes, Mrs. Edgar B. Stern, Charles P. Taft, John W. Gardner, and Ruth Clusen, Intervening Defendants.**

**No. 75-1061.**

United States Court of Appeals, District of Columbia Circuit.

Argued April 2, 1975.

Decided April 14, 1975.

In a suit for declaratory and injunctive relief against certain provisions of the Federal Election Campaign Act of 1971, of the 1974 amendments and of Subtitle H of the Internal Revenue Code, i. e., the dollar check-off provisions, on constitutional grounds, the United States District Court for the District of Columbia, Howard F. Corcoran, J., 387 F.Supp. 135, denied an application for a three-judge district court and certified constitutional questions to the Court of Appeals. The Court of Appeals held that under Campaign Act section setting forth special procedure for review of constitutional questions by certification to the Court of Appeals, the Court of Appeals, even assuming it could properly appoint its own master to make report of proposed findings, would remand the record to the District Court to identify constitutional issues in the complaint, take necessary evidence, make factual findings and certify constitutional questions arising. To protect against the contingency that the Supreme Court might eventually hold that constitutional issues arising under the statute for public financing of presidential elections should be decided by a three-judge court, district court would be advised to certify the need for a three-judge court as to such issues to the chief judge of the circuit in order that there might be parellel proceedings in that court and in the Court of Appeals with reference thereto.

Motion for remand granted to extent indicated, return of record ordered, and final action on defendants' motion to dismiss deferred.



Bazelon, Chief Judge, dissented and filed opinion.

For opinion on remand see —— F.Supp. ——.

For subsequent opinion of Court of Appeals see —— U.S.App.D.C. ——, —— F.2d ——.

**1. Courts ⇐405(14)**

Under Federal Election Campaign Act section setting forth special procedure for review of constitutional questions by certification to Court of Appeals, Court of Appeals, even assuming it could properly appoint its own master to make report of proposed findings, remanded record to district court to identify constitutional issues in complaint, take necessary evidence, make factual findings and certify constitutional questions arising. Federal Election Campaign Act Amendments of 1974, § 315(a), 2 U.S.C.A. § 437h(a); 26 U.S.C.A. (I.R.C. 1954) §§ 9001 et seq., 9011(b); 28 U.S.C.A. §§ 2282, 2284.

**2. Courts ⇐406.9(10)**

To protect against contingency that Supreme Court might eventually hold that constitutional issues arising under statute for public financing of presidential elections should be decided by three-judge court, district court was advised on remand to certify need for three-judge court as to such issues to chief judge of circuit in order that there might be parallel proceedings in that court and in Court of Appeals with reference thereto. Federal Election Campaign Act Amendments of 1974, § 315(a), 2 U.S.C.A. § 437h(a); 26 U.S.C.A. (I.R.C. 1954) §§ 9001 et seq., 9011(b); 28 U.S.C.A. §§ 2282, 2284.

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Before BAZELON, Chief Judge, and WRIGHT, McGOWAN, TAMM, LEVENTHAL, ROBINSON, MacKINNON and WILKEY, Circuit Judges.

### ORDER

PER CURIAM.

On consideration of the briefs, argument, and record made in connection with the pending motions to dismiss and to remand this action to the District Court, it is hereby

Ordered by the court that the motion to remand is granted to the extent indicated in the attached memorandum. The record herein is remanded together with the second round of filings of proposed findings of fact and supporting documents due on April 18, 1975 pursuant to our order of March 14, 1975. It is

Further ordered by the court that the District Court shall return the record to this court as soon as possible, but in no event later than May 19, 1975. It is

Further ordered by the court that final action by this court on defendants' motion to dismiss is deferred pending return of the record.

Chief Judge BAZELON dissents for the reasons set forth in his attached statement.

### MEMORANDUM

By the attached order, we seek to conform our treatment of this matter with the special review procedure set forth in Section 315(a) of the Federal Election Campaign Act, as amended (2 U.S.C. § 437h). That section requires that after the instituting of an action "as may be appropriate to construe the constitutionality of any provision of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code,"

BEST COPY AVAILABLE

then "[t]he district court immediately shall certify all questions of constitutionality of this Act or of section 608, 610, 611, 613, 614, 615, 616, or 617 of title 18, United States Code to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc."

We are remanding the record to the District Court to do the following:

1. Identify constitutional issues in the complaint.
2. Take whatever may be necessary in the form of evidence—over and above submissions that may suitably be handled through judicial notice, as of legislative facts, supported by legislative history or works reasonably available, to the extent not controverted in material and substantial degree.
3. Make findings of fact with reference to those issues.
4. Certify to this court constitutional questions arising from steps 1, 2, and 3.

As indicated in the attached order, the District Court will return the record, as augmented on remand, to this court immediately, and in no event later than May 19, 1975.

[1] We follow this procedure without ruling on the contention of defendants that such a procedure is required by the "certify" provision of Section 315(a), and that this provision must be read in conjunction with the rulings on the provision for certification of questions to the Supreme Court.[1] We would reach the same result, at least at this juncture, even assuming that Section 315(a) establishes a *sui generis* procedure and contemplates that, in the interest of expedition, the Court of Appeals properly proceeds by appointing its own master to make a report of proposed findings. Our order is consonant with both these approaches, in practical aspect, and it is unnecessary to make a choice between them at this time. It is also consistent with the intention of Congress for expedition in appellate disposition.[2]

Certain of the parties have questioned whether Subtitle H of the Internal Revenue Code (the public financing of presidential elections provisions) is subject to the procedures of Section 315(a). They cite 26 U.S.C. § 9011(b), which by its plain words commands a different review procedure—the convening of a three-judge court—for review of Chapter 95 of Subtitle H. It is the view of the other parties that the review provisions set forth in Section 315(a) are sufficiently broad that *all* constitutional questions must be certified to this court.

[2] To protect against the contingency that the Supreme Court might eventually hold that these issues should be decided by a three-judge court, either under 26 U.S.C. § 9011(b) or as to Chapter 96 under 28 U.S.C. §§ 2282, 2284, we suggest to the District Court that it certify the need for a three-judge court as to Subtitle H to the Chief Judge of this Circuit, in order that there may be parallel proceedings in that court and in this court with reference thereto.

1. *See* Lowden v. Northwestern Nat. Bank & Trust Co., 298 U.S. 160, 162, 56 S.Ct. 696, 80 L.Ed. 1114 (1936); Atlas Ins. Co. v. Southern, Inc., 306 U.S. 563, 572–573, 59 S.Ct. 657, 83 L.Ed. 987 (1939); Emsheimer v. New Orleans, 186 U.S. 33, 22 S.Ct. 770, 46 L.Ed. 1042 (1902).

2. The course we have designated will help avoid future embarrassment that might result if we chose one or another of the approaches offered by counsel and the Supreme Court were later to determine we had exceeded our authority.



BAZELON, Chief Judge (dissenting):

I am strongly opposed to remand and severance at this time, as I view both unnecessary and likely to cause serious delay in deciding these vital matters. The plain words of sections 315(a)[1] and 9011(b)[2] notwithstanding, I cannot conceive that Congress wishes the constitutional questions arising in connection with regulation of private campaign financing and the institution of limited public campaign financing be decided in two or three separate forums.

Nor can I see what specific advance will come from a remand to formulate constitutional questions since the District Court's formulation can not be realistically binding either upon the parties or upon this court on review. The section 315(a) review provision really involves certification of an entire case and not isolated questions such as those covered by direct certification to the Supreme Court or the United States Temporary Emergency Court of Appeals. This is because the plaintiffs' attack is upon the facial limitations imposed in the challenged statutes, rather than upon application of those statutes to a murky fact situation.

The majority cites three Supreme Court cases holding that questions raised by certification must be precisely framed, and tailored to the specific controlling facts.[3] But those cases deal primarily with the problem of certification of questions of state law. In the instant case the constitutional questions arising from the complaint are answerable in light of legislative facts, where difficulties of framing questions for the court would be abstract, unrelated, general or admitting of different answers since they relate chiefly to facial statutory dollar limitations. There is no danger here that this court will "declare a mere abstraction which might seem too narrow or too broad thereafter when the facts were shown forth." 298 U.S. at 163, 56 S.Ct. at 698. In another context the *Lowden* court comments about the error of assuming identical meanings each time the same word appears in statutory materials, which is very relevant to our inquiry into the meaning of the word "certify:" "when things are called by the same name, it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning." *Id.*

*Atlas, supra*, involves the applicability of various defenses in a state action over cancellation of insurance policies. The Supreme Court refused to answer questions certified to it because of this defect: "the certified questions are incapable of categorical answer and the questions which they suggest can be properly answered only by reframing the questions certified or giving qualified answers to them." 306 U.S. at 572, 59 S.Ct. at 661. This case, too, involves no special statutory review procedure and deals with adjudicatory facts, the shape of which may affect the decisions of law. In the instant case the constitutional questions arising from the complaint are answerable in light of legislative facts, where dif-

1. That is section 315(a) of the Federal Election Campaign Act, as amended, added by section 208(a) of the Federal Election Campaign Act Amendments of 1974.

2. 26 U.S.C. § 9011(b) contained within Chapter 95 of the Subtitle H and limited to "this chapter."

3. See Lowden v. Northwestern Nat. Bank & Trust Co., 298 U.S. 160, 162, 56 S.Ct. 696, 697, 80 L.Ed. 1114 (1936); Atlas Ins. Co. v. Southern, Inc., 306 U.S. 563, 571–573, 59 S.Ct. 657, 83 L.Ed. 987 (1939); Emsheimer v. New Orleans, 186 U.S. 33, 22 S.Ct. 770, 46 L.Ed. 1042 (1902). In *Lowden, supra*, the Court took the view that it would not answer questions on certification that were "abstract" and "unrelated," "unnecessarily general," or "which admit of one answer in one set of circumstances and a different answer in another; the differentiating circumstances being imperfectly disclosed." But there, there was no original jurisdiction in the Supreme Court, and the case was intended to go to judgment below. Here, no party or applicant for intervention argues that the statute contemplates judgment in the District Court. That said, the latitude for certification in the instant case is obviously broader. *Lowden, supra*, involved the technicalities of applying section 77 of the Bankruptcy Act to a complicated railway reorganization. While it is true that the trial judge did not formulate specific questions in the case at bar, neither is it the kind of case in which the questions which would be answered by this

marily with adjudicatory facts, or events which are themselves in dispute between the parties, and upon the resolution of which disputes by the trier of fact, application of law might well turn. And the certification involved, as I just noted, was of independent legal questions not the interrelated questions presented by this major constitutional case. At issue in this case is whether statutory prohibitions actually infringe upon constitutional rights. The facts bearing upon these questions are—we should assume absent specific evidence of particular adjudicatory disputes—legislative facts. In no way is the trial court better qualified than we to isolate and to decide those many questions whose resolution will turn on such legislative facts. Further, if the court below chooses to immerse itself in the long record made while the matter was on our docket, even more time may be lost.

The court tells us it does not decide whether these Supreme Court cases and their gloss on "certification" requires a formal certification procedure. But I perceive no other explanation for the court's action. Even if we ignore the term "remand," the practical effect of the court's decision is still to require compliance with these decisions on "certification." As to the majority's apparent view that this case must conform to normal judicial procedures of initial decision and appellate review, I think that the entire thrust of the review provision added by the 1974 Amendments was intentionally to make this case *sui generis*. In that regard, I would prefer selection as Special Master of an Article III judge to consider discovery requests and organize the already bulky factual presentations. The parties could then make motions for judgment in this court on the basis of the factual submissions. The majority's desire to "regularize" proceedings seems based on an unnecessarily technical view of our jurisdiction, a view motivated more, I take it, by a fear that the Supreme Court might reverse on such grounds than on a serious concern that assumption of jurisdiction would tamper with some important policy of judicial administration or impair the rights of any party or potential intervenor. I agree with plaintiffs' counsel when he stated at oral argument that any such fears should not be given significant weight. The Supreme Court, as well as we, can perceive the *sui generis* nature of this case and of Congress' command of expedition. And it will surely conclude, as I think we must, that no policy of judicial administration prevents a "nonregular" treatment of the case.

If this case is remanded to the District Court, and if discovery proceeds there, it may be utterly impossible for the May 19th deadline to be met. As it is, that date would only give this court a bare six weeks to hear objections to the District Court's formulation of questions and briefing and arguments on the merits before the July 1, 1975 date for disbursements to finance the nominating

ferent outcomes will turn on interpretation rather than disputed events shared by the parties.

The *Emsheimer* case likewise involves a certification to the Supreme Court in a case where judgment below was required. There it was said, "The entire record should not be transmitted and a decision asked on the whole case," but rather that the certificate should "contain a proper statement of the facts on which such question or proposition of law arises." One test in *Emsheimer* is that each question of law "can be definitely answered without regard to other issues of law in the case." 186 U.S. at 42, 22 S.Ct. at 773. Taking that as a standard, I do not see how this court could review a interrelated multi-statute regulatory scheme as is raised herein.



conventions pursuant to 26 U.S.C. § 9008(e). And, of course, this court and its personnel would have to re-immerse itself in the case and duplicate work performed by the District Court. A briefing schedule which contemplated appointment of a special master by this court would leave little time to spare for decisions of this matter, and I totally fail to perceive how remand will speed things up. This delay is particularly unfortunate considering the fact that the court has had the motion for remand under advisement officially since early February. The delay in ruling on the motion to remand is in my view cause enough to deny it, considering the further delay granting it will cause.

Further, I lay great emphasis upon section 315(a)'s use of the word "immediately" in the phrase "immediately shall certify." Some have argued that "immediately" here means the equivalent of "certify prior to deciding those constitutional questions it has formulated." But I would read the use of the word "immediately," in conjunction with the absence of any time provision relative to the District Court to mean that the case should be transmitted to this court immediately, if the trial judge finds any valid constitutional question raised by any person with standing to raise it. That was the understanding of the trial judge and I concur in it. The Memorandum and Order of January 24, 1975 specifically stated: "The Court specifically finds that the plaintiffs raise substantial constitutional questions, and that at least the four individual plaintiffs have standing to seek judicial review of the provision in question."

That being the case, I am of the view that our evidentiary order of March 14, 1975, in conjunction with another order appointing a Special Master to organize legislative facts submitted by the parties would provide a sufficient framework to focus and refine constitutional questions without remand. Such a procedure would also be more in harmony with the statute's call for expedition and avoid wasteful duplication. For these reasons, I would deny the motion for remand and dissent from the decision of the court.

**Order of District Court**
**(April 25, 1975)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

ORDER

This three-judge Court, having been convened to consider the complaint filed herein for a declaratory judgment and an injunction restraining the enforcement or operation of provisions of Subtitle H of the Internal Revenue Code of 1954 for repugnance to the Constitution of the United States, and having determined that the proceedings herein should parallel proceedings pending in the United States Court of Appeals for the District of Columbia Circuit as to Subtitle H and other Acts of Congress,

It is, this 25th day of April, 1975, by the Court, *sua sponte,*

ORDERED that, pursuant to 28 U.S.C. § 2284(5), the Honorable Howard F. Corcoran, as one of the judges of this three-judge Court, be and hereby is designated to

1. Identify the constitutional issues raised with respect to Subtitle H;

2. Take whatever may be necessary in the form of evidence – over and above submissions that may suitably be handled through judicial notice, as of legislative facts, supported by legislative history or works reasonably available, to the extent not controverted in material and substantial degree;



3. Make findings of fact with reference to those issues; and

4. Report to this Court the constitutional questions arising from steps 1, 2, and 3.

The action of the single judge shall be reviewable by the full three-judge court at any time before final hearing. The case will be heard and determined on the merits by the three judges at the earliest practicable date.

/s/ David L. Bazelon
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

/s/ Howard F. Corcoran
United States District Judge

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**Letter from William T. Lake to John R. Bolton**
**(May 1, 1975)**

WILMER, CUTLER & PICKERING
1666 K Street, N.W.
Washington, D.C. 20006
May 1, 1975

John R. Bolton, Jr., Esquire
Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

Dear John:

You have asked whether Marian Pearlman can supply a further breakdown of the contribution figures for the 1972

McGovern campaign contained in her affidavit submitted in connection with the *Buckley* Case. Specifically, you asked whether the figures for contributions over and under $1,000 can be broken down into shorter time periods.

Marian informs me that her records do not make it possible to break down further the figures for the pre-January 1971 period or the January 1971-February 1972 period. However, it is possible to provide the following further breakdown of the February 1972-April 7, 1972 period described in paragraph 9 of the affidavit.

First, the January 1971-February 1972 period for which figures are given in paragraph 8 of the affidavit is the period up to February 1, 1972.

Second, between February 1, 1972 and March 10, 1972, a total of 2,984 contributions were received, in the total amount of $240,278. The average contribution was $80.52. Of these contributions, 21 exceeded $1,000, for a total of $173,571. Considering the only first $1,000 of any contribution, the total received during this period was $87,707.

Third, between March 11, 1972 and April 6, 1972, a total of 9,951 contributions were received, in the total amount of $271,405. The average contribution was $27.27. Of these contributions, ten exceeded $1,000, for a total of $29,704. Considering only the first $1,000 of any contribution, the total received during this period was $251,701.

For the period after April 7, 1972, the figures in the affidavit for contributions of $100.00 or less were taken from the McGovern campaign records and are broken down in paragraph 11(a) of the affidavit according to reporting period. The figures in the affidavit for contributions over $100.00 were taken from the General Accounting Office



compilation attached to the affidavit, which gives only the totals for the period between April 7, 1972 and December 31, 1972.

Sincerely,

/s/ Bill
William T. Lake

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**Order of District Court**
**(August 15, 1975)**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

ORDER

This Court having, by order filed April 25, 1975, designated the Honorable Howard F. Corcoran, one of the judges of this three-judge Court, to identify the constitutional issues raised herein with respect to Subtitle H of the Internal Revenue Code of 1954, to take evidence and make findings of fact with reference to those issues, and to report to this Court the constitutional questions arising from those steps; and

Judge Corcoran having duly engaged in the activities aforesaid, and having by order filed May 28, 1975, duly reported to this Court his action and the constitutional questions which this Court is called upon to consider in connection with Subtitle H, and no party having objected to Judge Corcoran's action or report or having sought review thereof by the full court;

It is, this 15th day of August, 1975, by the Court

ORDERED that the aforesaid action and report of Judge Corcoran be and hereby are confirmed in all respects.

/s/ David L. Bazelon
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

/s/ Howard F. Corcoran
United States District Judge

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